AN

APPEAL TO ENGLAND

TO SAVE INDIA

FROM THE

WRONG AND THE SHAME

OF THE

"AGE OF CONSENT" ACT.



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INTRODUCTORY NOTE.

It is by way of an Appeal to the British People, against the action of the Government of India in passing what is usually known as the Consent Act, that the *Sádhárani Sabhá*, or the Public Association of Báli, in the District of Hugli, Bengal, publishes the accompanying papers, including a brief account of the Public Meeting held at Báli, to protest against the Act, and the Petitions to the House of Commons and the Secretary of State for India prepared by the Committee appointed at that meeting. It is hardly necessary to apologise for the coarse and obscene language that will be found in many places in the papers, for it was not possible to avoid such language in a discussion on a law, which declares sexual intercourse between husband and wife rape, if the wife is under 12 years of age; just as it is not possible to avoid obscene details in anatomy and physiology, surgery, and medicine. However disagreeable the subject may be, it is the duty of every Englishman to study it, for the Government measure has created a sense of discontent, uneasiness, and alarm in India, unknown since the dark days of the Mutiny. The Hindus complain, and complain with reason as a perusal of the papers will convince every candid person, that the Act does violence to their religion, that it is sure to introduce inquisitorial investigations into domestic matters of the most private nature; that any good that it may be expected to do will be more than counterbalanced by the hideous moral degradation, shame, and wrong that it will bring in its train; and that, at the time of the passing of the Act, remarks were made by the highest authority in India, namely, the Representative of the Queen-Empress, which have taken away almost all significance from Her Majesty's Gracious Proclamation

of 1858, which the people had hitherto been accustomed to regard as the great charter of their religious liberty. For it has been broadly maintained that the Proclamation is no bar to Government interference in all matters in which Indian religions are in conflict with English morality, humanity, and civilisation.

It is easy to see that this reading of the Proclamation leaves in it nothing valuable in the eyes of the Indian so far as religious liberty and toleration are concerned. At the best it becomes reduced to a mere enunciation of what, in these days of religious toleration, is almost a truism, that the English Government will not *wantonly* interfere with the religious beliefs of its Indian subjects, or will not forcibly proselytise them. It is needless to say that in a country where religion is one of the keenest sentiments of men, this interpretation of the Royal Proclamation, which had hitherto been taken as a charter, giving the people the most solemn pledges in the name of God, that they would enjoy absolute immunity from Government interference with their religion and with social customs and usages based upon religion,—it is needless to say that this interpretation has filled their minds with alarm and uneasiness, the consequences of which no man can foresee. Every one knows that under the quiet surface of Indian society, their slumbers, a religious enthusiasm, which may, at any moment, blow up into a fanatical explosion,* and though a strong invulnerable Government, like the English Government of India, need entertain no fear of disaster to itself, it cannot divest itself of the solemn responsibility of so ruling the populations committed to its care, that the people may not, through its action, be goaded to bring disaster upon themselves. Years of wise and sympathetic rule like that especially of Lord Ripon and of Lord Dufferin,

* The recent riots at Tárakeswar in Bengal, and at Benares, the sacred City of the Hindus, in Upper India, in which latter place the riots were provoked by the apprehension that orders had been given to demolish a Hindu temple, may be given as illustrations.

had evoked in the minds of the people a devoted loyalty to the alien Government, which now sways the destinies of India,—a loyalty which made them glory in the glory of their rulers. In an evil moment all this is going to be changed. The fanatical spirit of forcing reforms down the throats of an unwilling people, which had been deprecated by the greatest statesmen India has had for her rulers, notably by Lord Dufferin so late as in 1886, has taken possession of the Governmental mind, the consequences of which will be simply disastrous, unless wiser counsels prevail in England to undo the mischief that has been done here; the devoted loyalty of the people will be changed to at best a sullen acquiescence of an unsympathetic alien rule, too strong to be resisted.

An examination of the following papers will also show that the magnitude of the evil complained of is not at all so grave as has been represented to be, and that it does not call for legislative interference, which indeed is not likely to do much good, though it is sure to do incalculable mischief. It will also show that the reform contemplated by the Government might easily have been made without doing the slightest violence to the religious susceptibilities of the people. The Government has not ventured to raise the age of consent beyond 12 years. Now puberty in this country is usually attained by girls at about 12, in only about 35 cases in a hundred *under* 12, and in the remaining 65 cases *after* 12. The people prayed that this puberty might be fixed as the limit instead of the hard-and-fast 12 years age. Had this prayer been listened to, the religious objection to the Act would have been completely removed.

The people pointed out that as the child-wife, whose husband would, for violating her, be transported for life or imprisoned for ten years in accordance with the provision of the Act would be in even a worse position of misery than her transported husband, humanity required that she should not be doomed to lifelong misery,

probably to a life of shame, without her own consent or that of her lawful guardians; so that no case, under the Act, should be instituted except upon complaint by the injured child-wife herself or her guardians. This concession would also have gone a great way to remove, indeed would have completely removed, the second great objection to the Act, namely, that it would give a terrible handle to the Police and designing men to oppress people, from the prince to the peasant, in the land. But even this concession was not made.

It was represented that it was hardly fitting that sexual intercourse between husband and wife should in any case be characterised as rape, the chief elements which constituted the heinousness of that crime, namely, the violation of chastity and the consequent indelible disgrace upon the husband's family, being absent in the case; it was also represented that it hardly stood to reason that sexual intercourse with a girl under 12 by her own husband and by a stranger should be put on the same level, and both punished with the same condign punishment, namely, transportation for life or imprisonment for ten years. But no heed whatever was paid to these representations.

It was pointed out that in cases where physical injuries resulted from the act of sexual intercourse, the husband guilty of the brutality might be punished under other sections of the Penal Code, as they have actually been in some cases*; and it was suggested that if it was thought the existing provisions of the Criminal Law were not sufficient to bring all such offenders to condign punishment, suitable amendments might be introduced into the Criminal Law for the purpose. But it was clearly a hard measure, it was contended, that in order to bring such

* The Author of the Act, Sir Andrew Scobble, himself admits this plainly enough when he says, "And though this age [12 years] may be considered by some too low, it must be borne in mind that while this amendment of the law [*i.e.*, the present Act, which amends the Indian Penal Code] will afford absolute legislative protection up to the age of twelve years, the remedies of the existing law in regard to cases of brutality will remain available to girls above that age."

brutal husbands to condign punishment, the husband who had intercourse with a willing wife, without inflicting any injuries whatever, should also be subjected to the same severe punishment. It was represented that sexual intercourse with a girl under 12, when there is no physical injury whatever, is more of the nature of a vice, and if it is to be made a crime at all, it should not certainly be made so terrible a crime as requires to be punished with transportation for life, or imprisonment for ten years. It was pointed out that girls in this country often attain puberty before 12, which, indeed, is not too early an age, as an Englishman is apt to think, for 12 years in the tropics represents a state of maturity, which, according to unquestionable medical testimony, is reached in the colder climate of England at 14 or even 15*; that girls conceived and were safely delivered of perfectly healthy children before that age, so that the people cannot possibly reconcile themselves to the provisions of this Act, which cannot but be regarded by them as Draconian in its severity. The Government did not attach the slightest weight to all these obvious considerations. It remains to be seen if the British public will also be equally indifferent to the plaintive pleadings of a subject-people.

Late marriages are the order of the day in Europe. An attempt has been made in the following papers to indicate the good points of early marriage and to show that it is not absolutely the barbarous and abhorrent thing it is usually represented to be by English critics of Indian social systems, but that it has many a redeeming, many a compensating feature. This will not probably produce the least impression on the English mind, but nevertheless even the English mind will perhaps fail to see the justice of a

* Dr. Playfair says, "there is an average difference of *more than two years* between he period of its establishment [the establishment of the catamenia in girls] in the tropics and in the temperate countries." (*Vide* Appendix A, pp. 16-17, and also Appendix B., pp. 8-9.)

measure which, not daring to interfere with the custom of early marriage itself, declares that consummation of marriage, even when it produces no physical injuries on the wife, and when it may, as it frequently does, result in the begetting of healthy offspring, should be held a deadly crime punishable with transportation for life or imprisonment for ten years. Could the Englishman himself, with all his abhorrence of early marriages, tolerate a penal enactment, which made the husband's sexual intercourse with his wife of 15 years of age (for, as has been already said, 12 in India would correspond to about 15 in England), punishable with transportion for life or imprisonment for ten years? If not, it is his bounden duty to free the people of India from such a penal statute, which cannot but be infinitely more galling to them, as they have, for long ages, from generation to generation, managed to live and even to thrive in their own way, under the system of early marriages.

One thing at any rate is certain. The Englishman cannot possibly approve of a thing which may be taken as an *indirect* way of producing a desired result, which it is not so easy and *safe* to bring about by direct means. The refusal by the Government to accept the puberty test in place of the hard-and-fast 12 years age test; by which the religious difficulty would have been completely got rid of; to make the offence cognisable only upon complaints made by the injured child-wife or her guardians, which would have freed the people from the dismal fear of inquisitorial oppression; to make any distinction between sexual intercourse committed by a husband and by a stranger; to provide a reasonable punishment when no bodily injury is the result of the act;—the refusal of the Government to do these things has filled the minds of the people with a suspicion that the real object of the Government is not the eradication of the particular evil complained of, but the abolition of early marriage itself; that, as it was

not *safe* to do so directly (the word *safe* was used in this very connexion by a responsible Member of Council), Government has hit upon this *indirect* way of achieving the object. This Draconian law hanging before their eyes in all its grim terror, the people will gradually be forced to marry their girls after 12; and when, by successive instalments of reform by Acts of the Legislature the so-called Age of Consent will have been raised to 14 and 16 or 17, early marriage itself will have been abolished; with the abolition of early marriage much that is distinctive and valuable in Indian societies will have passed away, and the disorganisation of these societies will have been accomplished. These fears are not idle fears. They are, as has been fully shown in the following papers, almost suggested by the speeches made in the Legislative Council when the Act was passed. Far better that England, in the plenitude of her power, should directly abolish the system of early marriage, if she, in her conscience, felt that that system was of a piece with the *suttee rite*, and other cruel customs that she has abolished, than that she should adopt *indirect* means to compass that end. If, however, the abolition of early marriage is not her object (and it ought not to be concealed that the attempt to abolish early marriage by *direct* Legislation might lead to deplorable consequences), let her order the immediate repeal of the present Act or, at any rate, see that the modifications suggested above, are adopted to mitigate its rigour. Failing to do either of these things, the English nation will assuredly forfeit the right to the respect of her subject-people as not only a powerful but also as a just and generous nation.

This note cannot be better concluded than with the words of that distinguished Indian, whose public career won the admiration and respect of the Government, and whom it accordingly delighted to honor with titles and decorations. Sir Raja T. Madhav Rao is no more and a melancholy interest attaches to almost the

last words that the great Indian statesman uttered. It is for the people of England to ponder on these wise words of one of the wisest sons of India, in whom Eastern and Western culture, harmoniously wrought together, produced a remarkable type of manhood. The words of Raja Sir T. Madhav Rao are as follow :—

"Permit me to address you these few lines. I simply ask you to read them with attention, and appreciate their truth.

"Those who advocate the raising of the Age of Consent do great injustice and wrong to those who advocate non-interference, by accusing them of a desire to perpetuate the supposed practice of intercourse with immature girls.

"The advocates of non-interference deny the existence of any such practice. As a general rule, native parents and native husbands condemn and avoid premature sexual intercourse, quite as much as people in England. Therefore it is, they deprecate, the interference of the state in the matter. They deprecate on the two-fold ground that first it would be unnecessary, and secondly, that it would be mischievous, inquisitorial, vexatious in the extreme, and calculated to disturb the peace and happiness of innocent men and sensitive women, all over India. It would be most unwise for an alien Government to carry its interference into the sacred precincts of the bed-chamber of its subjects, rich and poor alike, Hindu and Mahomedan alike, whether living in the palace or in the cottage, whether zemindar or ryot, whether the peaceful trader or the turbulent soldier, whether the labouring coolie or the sensitive and high-spirited Rajput.

"A wise and prudent legislature should scrupulously abstain from simultaneously disturbing the most sensitive feelings of all classes and creeds from Comorin to Cashmere.

"Be it noted that nothing should be constituted a crime, attended with heavy penal consequences, which

cannot be proved or disproved without almost intolerable vexation to sensitive men and women, all over the country.

"To prove a charge of rape under the proposed law, would be extremely difficult. Extremely difficult would it also be to disprove it, though it would be extremely easy to prefer it.

"Remember the provision of the Indian Penal Code. 'Penetration is sufficient to constitute the crime necessary to the offence of rape.' In proving or disproving this fact what an amount of vexation, trouble and irritation would have to be undergone by sensitive Hindus and intolerent Mahomedans.

"Remember also the sort of Police the State has and must have. False or reckless charges might be launched against the highest or lowest member of any family. Once launched, the criminal proceedings must go on till they reach an end.

"See the several kinds of defence legally or *popularly*, possible. They are as follow :—

1. No sexual intercourse took place.
2. It was only harmless dalliance.
3. There was nothing like penetration, the essential element of the crime of rape.
4. The girl concerned was not below the prescribed age.
5. The girl had attained maturity.

"Now think how extremely difficult it would be for the defence to prove any of these points.

"To avoid the incalculable vexation and disgrace concerned, corruption of the Police would be resorted to on an awful scale.

"The evils need not be further explained. They must be left to be imagined by men of thought and judgment.

"The State in India has an infinite variety of the most difficult, intricate, and important matters to attend to. It need not deeply embarrass itself by undertaking to scientifically regulate the time and exact degree of sexual intercourse in millions of bed-chambers. If the house is the castle of every Englishman, the bed-chamber is the most sacred part of the house of every native of India.

"The well-wishers of British Rule in India must feel it their duty to earnestly deprecate extension of legislative interference on such lines as are proposed, and suggest the great danger attendant upon it.

"May truth be found and maintained, and gross errors avoided."

AUBINASH CHUNDER BANERJI,
Honorary Secretary,
BALI SADHARANI SABHA.

BÁLI,
The 22nd April, 1891.

PUBLIC MEETING AT BÁLI.

To protest against the Consent Act.

Under the auspices of the Báli Sádhárani Sabhá, a crowded public meeting of the inhabitants of Báli, Uttarpárá, Belur and the neighbouring villages was held on the 27th of March last, at the Hall of the Báli Rivers Thompson School. The Hall and the adjoining rooms were crowded to suffocation and many had to go away for want of space. The greatest enthusiasm prevailed throughout.

On the proposal of Raja Peary Mohan Mukerji, C. S. I., Mahámahopádáyáy Dina Bandhu Nyáyáratna was unanimously voted to the chair.

The following resolutions were carried by acclamation:

I. Proposed by Babu Brindavan Chandra Mukerji, seconded by Babu Jogindra Nath Chatterji:—That this meeting desires to place on record its feeling of deep grief and humiliation at the passing of the Consent Act, which is a deadly blow to the social system of the Hindus and also to the Hindu Religion.

II. Proposed by Pandit Guru Charan Vidyábhúshan, seconded by Babu Háràdhan Chátterji:—That efforts should be made to have the new law

rejected by Her Majesty's Secretary of State in Council and the British Parliament.

III. Proposed by Babu Hem Chandra Banerji, seconded by Babu Udaya Chandra Sannyal :—That the following telegram be sent to the Secretary of State.

"The people of Báli-Uttarpárá in public meeting assembled pray Your Lordship to *veto* the Consent Bill. Petition follows."

IV. Proposed by Babu Aubinash Chandra Goswami, seconded by Babu Siva Dhan Mookerjee :—That the following gentlemen *viz.* Raja Peary Mohun Mookerjee, C. S. I., Rai Kedar Nath Chatterjee Bahadur, Rai Aubinash Chandra Banerji Bahadur, Babu Hara Dhan Chatterjee and Babu Jogindra Nath Chatterjee be formed into a Committee to draw up petitions, to the Secretary of State and the British Parliament, get them largely signed, and forward them as soon as possible.

V.—Proposed by Babu Bhagavati Charan Banerjee, seconded by Babu Nivaran Chandra Banerjee :—That the following gentlemen, *viz.*; Rai Kedar Nath Chatterjee Bahadur, Rai Aubinash Chandra Banerjee Bahadur, and Babus Hem Chandra Banerjee, Hara Dhan Chatterjee, and Jogindra Nath Chatterjee be elected as delegates to represent the people of the place at the Public Meeting that may be held in Calcutta to protest against the Act.

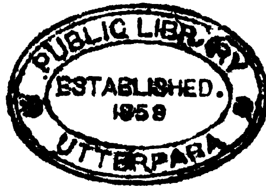
VI.—Proposed by Rai Abinash Chandra Banerjee Bahadur and carried unanimously:—That the Committee of the Sádhárani Sabhá be empowered to raise a fund by subscription to defray the expenses incurred by the Sádhárani Sabhá in printing memorials, sending telegrams, and contributing to the general fund that may be raised to conduct the agitation in England, &c. &c.

The President in bringing the proceedings to a conclusion exhorted the people to do all in their power to carry on the agitation against the Act in England. He said that Viceroys and Governors were only the agents of their Sovereign and were not their real masters, and they could not be expected to feel that sympathy with the people which their Mistress and Sovereign assuredly felt. "Let us, therefore," he said, "approach in all humility the Throne of England and the English People with our plaintive appeal, and our wrongs will surely be righted. Our dear religion is at stake, the quiet and comfort of our domestic life is at stake; it is our plain duty to go to England to save our religion and the peace and happiness of our homes." (loud cheers).

With a vote of thanks to the Chair the meeting separated.

Báli
The 27th March, 1891.

Sd. DINABANDHU NYAYARATNA
President.



To

The HONOURABLE THE COMMONS

OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND, IN PARLIAMENT ASSEMBLED.

The Humble Petition of the inhabitants of Báli Uttárpárá and neighbouring places, in the District of Hugli, Bengal,

MOST RESPECTFULLY SHEWETH—

THAT Your humble Petitioners beg leave to bring to the notice of Your Hon'ble House that the Supreme Legislative Council of India passed on the 19th of March last an Act, being Act X of 1891 (commonly known as the Consent Act), and that the said Act received the assent of His Excellency the Viceroy on the same day.

2. That the said Act will interfere with the religious practices of a large portion of the Indian subjects of Her Gracious Majesty the Queen-Empress, and is therefore a violation of the distinct pledges given to the people of the country by Her Majesty's Proclamation of 1858.

3. That the said Act, if brought into operation, is sure to introduce a system of disgraceful inquisition into the domestic life of the people in its most private and delicate parts, which will have the effect of banishing all peace and happiness from the homes of Her Majesty's Indian Subjects, and will thus be a source of terrible moral degradation to them.

4. That such interference with the domestic life of a people, which is mischievous under all circumstances, should never have been made by an alien Government, which must almost necessarily be ignorant of the mischiefs which such interference is likely to cause.

5. That the said interference and the unsympathetic way in which it was made, have filled the minds of the people with a sense of deep humiliation and also of bewilderment, that such a wise and sympathetic Government, which had made them not only reconciled but devotedly loyal to an alien rule, could possibly be made to swerve from that fixed policy of non-interference with religious and domestic matters, which has been attended with such signal success that the teeming millions of India live in peace and contentment under the shadow and shelter of the British over-rule.

6. That facts and arguments have been given in detail in a Petition submitted by the Petitioners of Your Hon'ble House to the Right Honourable the Secretary of State for India, (of which a printed copy is enclosed for the information of Your Hon'ble House), from which it will abundantly appear that the said Act should either altogether be disallowed or at least so modified as to be acceptable to the people of India by the removal of its most objectionable features, namely, its interference with religion and its introduction of inquisitorial investigations into domestic matters.

7. That apart from the Act itself, the humble Petitioners of Your Hon'ble House beg to represent that

the interpretation sought to be given to the Royal Proclamation of 1858, both by the Law Member of the Supreme Council and His Excellency the Viceroy himself, has taken away all significance from that document, which hitherto had been regarded by the people of this country as the great charter of their religious liberty.

It has been roundly maintained that whenever an Indian religion is in conflict with morality, humanity and civilisation,—by which of course can only be meant what the India Government holds to be morality, humanity and civilisation, it being notorious that different nations have different standards of these complex things,—it is the religion which must give way, and the Royal Proclamation was not meant to be a bar to Legislative interference in such matters. It is clear that if this view of the Proclamation is correct, the document is a bar to only *wanton* interference, or interference with the direct object of proselytisation. This interpretation of the Proclamation has, even more than the Act itself, had the effect of unsettling men's minds, by giving a rude shock to the devoted loyalty of a people, who hitherto believed that though they were under an alien rule, their religious beliefs and practices and domestic life were perfectly safe from Government interference. The evil effects of this state of mind of the people of India are in the humble opinion of the Petitioners of Your Hon'ble House simply incalculable.

The Petitioners of Your Hon'ble House, therefore, humbly pray that Your Hon'ble House may be pleased to take this grave matter into Your serious consideration, and to advise Her Gracious Majesty to disallow or considerably

modify the Act and to direct the Government of India to withdraw the interpretation sought to be given to the Royal Proclamation at the time of the passing of the Act.

And the Petitioners of Your Hon'ble House shall, as in duty bound, ever pray.

(Sd.) PEARY MOHUN MUKURJI,
,, KEDAR NATH CHATTERJI,
The 2nd April, 1891. ,, AUBINASH CHUNDER BANERJI,
,, HARADHAN CHATTERJI,
,, JOGINDRA NATH CHATTERJI,
and over 2,000 others.

PETITION

To The Secretary of State for India.

To

THE RIGHT HON'BLE

LORD VISCOUNT CROSS, G. C. B.,

&c., &c.

Secretary of State for India.

The humble petition of the inhabitants of Báli, Uttarpárá and the neighbouring places in the District of Hughli.

MOST HUMBLY SHEWETH,

THAT Your Lordship's Petitioners are aggrieved by the Bill known as the "Age of Consent" Bill being passed into law as Act X of 1891 by the Supreme Legislative Council of India on Thursday the 19th of March, 1891.

2. That the said Act is a direct interference with certain religious customs of a large section of the Hindu subjects of Her Majesty the Queen-Empress and as such is a violation of the principles of religious liberty and non-interference so emphatically laid down in Her Majesty's Gracious Proclamation of 1858, which is justly regarded as their great charter of religious liberty by the people of this country.

3. That the virtual annulment of the Proclamation by the passing of this Act and the express declarations made in Council on the occasion of its passing by not only the Legal Member Sir Andrew Scoble but also His Excellency, the Viceroy himself has filled Your Lordship's Petitioners, as it has filled the people of India generally, with deep sorrow and alarm.

4. That Your Lordship's Petitioners beg to append hereto printed copies of the following papers :—

(a.) The Note of Dissent recorded by the Hon'ble Sir Romesh Chunder Mitter in the Report of the Select Committee, a paper in which the objections to the Bill have been set down with truly judicial impartiality, and excellent suggestions to modify it have been made. (Your Lordship's Petitioners beg parenthetically to express their regret that ill-health prevented Sir Romesh Chunder from attending the meeting of the Council in which the Bill was passed, a circumstance which ought in the humble opinion of Your Lordship's Petitioners to have induced His Excellency the Viceroy to have postponed the consideration of the Bill at that meeting.) (Appendix A).

(b.) A note by Dr. Juggobandhu Bose, a distinguished M. D. of the Calcutta University and

the most eminent Indian Medical Practitioner of 36 years' experience and formerly a Professor of the Calcutta Medical School. The note was originally written by the Doctor in response to an invitation to express his opinion on the Consent Bill from the British Indian Association; it has subsequently been revised by him for submission with this petition. It shows that the evils of consummation of marriage are not so great in India as in countries where late marriages obtain and that even according to European physiology a girl on the attainment of puberty becomes at once fit for child-bearing. (Appendix B).

(c.) The memorials and notes &c., submitted from Báli and Uttarpárá to Government in which the religious objection to the Bill is gone into with some minuteness. (Appendix C).

(d.) The petition submitted from Báli and Uttarpárá to His Excellency the Viceroy being mainly an earnest appeal, addressed to His Excellency personally, to save the Hindu religion by the substitution of the age of puberty for the hard and fast 12 years age limit. (Appendix D).

5. That Your Lordship's Petitioners beg here to recapitulate some of the more important arguments against the Act and to show how the Bill could have been easily modified so as to be entirely free

from religious objections not only without any injury to the measure, but with substantial improvement thereto.

6. Your Lordship's Petitioners have no wish to deny the existence of the social evil, against which the measure is directed; indeed, it was admitted in the memorial to the Viceroy appended hereto and from which the Legal Member of the Government of India, Sir Andrew Scoble, made an extract in his speech in the Legislative Council; but they beg to assert that the evil has been grossly exaggerated, that the present measure is not calculated to remove the evil, while it is likely to lead to increase of perjury and corruption and to terrible wrong and oppression.

7. The position taken up by the Hon'ble Sir Romesh Chunder Mitter that the measure would be inoperative as no cases would ever be brought under it, except where brutal injuries were caused by husbands on their child-wives—this position has been admitted in Council. The Hon'ble Mr. Evans said in his speech "As regards the first of these statements, [*viz.* " that there will be no prosecutions under this Act, except where there has been physical injury of a grave kind"] I must admit that there is a great deal of truth in it. I do not expect that there will be many prosecutions, except where there has

been severe injury, and the reason why I think so is this. These things take place in the privacy of the zenana............"

The Hon'ble Mr. Bliss said "As to the efficacy of the law as it will stand as amended, I think it is extremely probable that very few cases will be brought forward under it. It is not, in fact, at all desirable that cases of this kind should often come before the courts."

8. The further position taken up by the Hon'ble Sir Romesh Chunder, *viz.*, that cases of injury inflicted by husbands upon their child-wives, can be adequately dealt with under the existing Penal Code is denied by the majority of the Council. It is denied by the Law Member and it is denied by the Hon'ble Mr. Evans who says, "So long as sexual intercourse with these little immature girl-wives is allowed by us to be a lawful act and so long as it is done in a lawful manner, by lawful means, and with proper care and caution, unless it can be shown that there was some criminal intention or knowledge, the doer of the act is bound to go scot free."

Your Lordship's Petitioners do not think that it can at all be held that an act, which causes brutal injury to a child-wife, can ever be reasonably said to be done "with proper care and caution," and

the ruffian who injures his child-wife by violating her can never reasonably plead that the injuries are the result of accident. But if it is otherwise, if the view of the Hon'ble Mr. Evans is the correct view of the law, all that it is necessary to do, is to amend the law in that respect. A broad provision may be made that when injuries are done to child-wives (and a girl of 14 even, may very properly be made to come under the designation of a child-wife) by their husbands in the act of sexual intercourse, the presumption of law will be that the act was not done with due care and caution.

9. Your Lordship's Petitioners beg humbly to express their strong sense of the unfitness of calling sexual intercourse between husband and wife as rape under any circumstances. As has been said in the memorial appended (Appendix C. p. 6) "some of the elements that constitute the heinousness of the offence of rape namely the violation of female chastity and the consequent indelible disgrace upon the husband and his family are entirely absent in such cases. This glaring anomaly in the criminal law [of India] should be remedied instead of being aggravated, as it would necessarily be, if the present Bill became law [and the so-called Age of Consent were raised from 10, as the existing law has it, to 12.] The anomaly is certainly not a necessary one and there can be no doubt that

if the legislature gave the matter its serious consideration, it could readily find means to remove it altogether." The force of this objection has in a manner been admitted by the Hon'ble Mr. Hutchins, the member of Council in charge of the Home Department of the Government of India, where he says "If one of the worst features of rape when committed by a stranger is wanting in the case of a husband, there is, on the other hand, this aggravation that the husband himself is the natural protector of his victim, and takes a most cowardly advantage of her dependence upon him." Now the aggravation spoken of can not certainly be considered to be equal in weight to the absence of those elements which peculiarly constitute the offence of rape. Indeed, the physical violence is almost of insignificant weight in a consideration of the heinousness of that offence.

10. Your Lordship's Petitioners understand that in English Law the offence of rape in sexual connexion between man and wife is unknown. It is established, on unquestionable medical testimony, that women in the tropics attain maturity much sooner than in colder countries like England. So that the age of 12 in this country would represent a state of maturity which in England would be reached at 14 or even 15. Now the minimum marriageable age for girls in England is 12 by law.

If therefore Your Lordship would only imagine that a penal law was passed in England by which sexual intercourse between a man and his wife, if the wife was under 15 or at least under 14, was declared to be the heinous offence of rape punishable with transportation for life or imprisonment for 10 years, Your Lordship would be able to form some idea of the character of the law which the Indian Legislature has thought it fit to impose upon the people of this unfortunate land. Your Lordship's Petitioners use the words '*some idea*' advisedly, for in England such a law would not, in the opinion of the people, be an interference with their religion, whereas in this country a large section of the people feel, and have good reasons to feel, that it would interfere with one of their important religious customs.

11. Sexual intercourse between a man and his wife, Your Lordship's Petitioners humbly submit, therefore, should never be called rape; it can only be characterised as premature; and punishment for premature sexual intercourse should not be at all so severe; unless, indeed, it causes physical injury to the wife, in which case, however, severe punishment can be awarded under the criminal law of the land, a punishment which the offender cannot escape if the suggestion made above is accepted, *viz.*, that when any injury is

caused to the child-wife by an act of sexual intercourse, the presumption of law will always and (even irrebuttably) be that the Act was not done with due care and caution. Indeed such premature sexual intercourse as causes no physical injury to the wife, might in Your Lordship's Petitioners' humble opinion, be regarded as a vice like other vices of young people on the threshold of the age of puberty, and that it might not be regarded as a crime requiring to be punished by penal laws—much less by such a penal law as the present, which provides the infliction on the vicious husband the punishment of transportation for life or imprisonment for 10 years. Your Lordship will be pleased to pardon Your Lordship's Petitioners if they venture to express their real feeling in regard to the punishment provided in the law —if they venture to say that they consider it almost Draconian in its severity. "Indeed," as it has been stated in the appeal to the Viceroy, appended to this petition, (Appendix D, p. 6) "the severity of the punishment would serve only to defeat the very object of the measure. If the measure provided anything like a reasonable punishment for the husband guilty of the offence (without, of course, the infliction of bodily injury by the act, which can be dealt with under other sections of the Penal Code), there might have been some

chance of offenders being proceeded against. As it is, the absolute ruin that a successful prosecution would bring upon the poor victim of the offence, the unfortunate girl, would serve only to make the law a dead-letter, except when designing men wanted to turn it into an engine of oppression."

In defending the punishment provided in the Bill, now an Act, the Law-member Sir Andrew Scoble is reported to have said "Then, it is said that the offence, when committed by a husband against his wife ought not to be classed as rape and should be visited with a lighter punishment. I do not think it desirable that the gravity of the offence should be minimised in this way. I agree with Sir Meredyth Plowden that it is an offence affecting the wife not as wife but as a human creature, and I should greatly regret if this Council were to weaken the effect of the Bill by drawing a distinction in favour of brutality on the part of husbands. With regard to the amount of punishment to be inflicted, that is a matter for the consideration of the Courts, which will apportion it, within the limits laid down in the Bill, according to the circumstances of the case; and while in some instances, a light penalty may be inflicted, it can scarcely be doubted that cases will occur in which the highest penalty

awardable will not be disproportionate to the seriousness of the offence committed." On this it may be observed that grave cases of the offence, in which physical injury is done, will fall under other provisions of the Penal Code and it will not be possible for offenders, who are guilty of brutality towards their wives, to escape condign punishment if the suggestion made above in regard to the presumption of law in such cases, were adopted. Your Lordship's Petitioners deeply regret that even in the speeches delivered at the Council table, high officers of Government considered it fitting to insinuate that the people of this country consider ruffianism on the part of a husband to his child-wife as a venal offence. Nothing of the kind. They desire all such ruffians to be condignly punished and they regret that either the state of the present law, or the incompetence of the judicial officers, have led to miscarriage of justice in some of these cases. Indeed, in all sexual offences the people of this country are accustomed to take a much severer view of the offence than the British Legislature. The immunity of the adultress from punishment, in the criminal law of the land, is a case in point. They will therefore be only too glad if the law is so modified that a ruffian husband treating his wife with brutality should meet with condign punishment and with this view

Your Lordship's Petitioners have made a definite suggestion above. They may however take the liberty to point out that in the famous *Hari Maiti* case, which has been the exciting cause, as it were, of the introduction of this measure, the English Judge of the Calcutta High Court who tried the case, sentenced the offender to one year's imprisonment, when he might under the law have easily doubled the sentence, 2 years' imprisonment being the maximum punishment awardable under the Section of the Penal Code under which *Hari Maiti* was charged.

It is only in cases where the girl of a tropical country is so mature, though under 12 years of age, that her husband may have connexion with her without the least physical injury—and that this is so in very many cases is at once manifest from the "patent fact that many girls in this country become mothers before or immediately after 12," which however undesirable it may be thought to be, plainly shows that in such cases there is nothing like inhumanity or brutality in the act itself,—it is only in these cases that the conscience of the people cannot approve of making the act a crime punishable with such severity as transportation for life or imprisonment for 10 years. To say that the maximum punishment awardable under the law is immaterial as the Judge

trying each case will award suitable punishment, is simply an evasion of the difficulty and is altogether unworthy of a legislator. It may also here be mentioned that some girls under 12 may be relatively more mature than other girls above 12, say of 13 or even 14, and that in many cases they even attain puberty before 12, for development does not depend solely on a fixed number of years but on the constitution of each individual. To punish severely a man who has intercourse with a wife who has attained puberty, is, in the opinion of the people of this country, an inconsiderate exercise of arbitrary power.

Another argument advanced in support of the severity of the punishment is also suggested by the Hon'ble Mr. Hutchins. He says "The punishment for abetment when it cannot be shown that the offence abetted has been committed is only one-fourth of that assigned for the principal offence. It is therefore necessary that the maximum punishment of rape by a husband should be four times what may be deemed an adequate sentence for a bad case of abetment." This, Your Lordship's Petitioners humbly submit, is penal legislation with a vengeance. When even no offence is committed the abettors are to be punished; but as their punishment can only be one-fourth of that assigned for the principal offence, the punishment for

the principal offence must be made so high that one-fourth of that may also be sufficiently high. In what is called a bad case of abetment, where no offence is actually committed, but the offence might only have been committed, the legislators could not think that less than transportation for 5 years (as, under Sec. 57 of the Indian Penal Code, in calculating fractions of terms of punishment, transportation for life has to be reckoned as equivalent to transportation for 20 years) or imprisonment for two years and a half would be an adequate punishment. How very hard it would be for parents to be punished for allowing their boys and daughters-in-law to come together will appear from the facts that most poor people in this country have only one room to live in, that under the social customs of the country it is necessary to bring home daughters-in-law shortly after marriage and that in cases where the girls have no parents or guardians to take care of them, their fathers-in-law cannot but bring them under the shelter of their own homes.

The only other argument in defence of the severe punishment provided in the Act is also put by the same member the Hon'ble Mr. Hutchins. He says "I may perhaps mention one reason why the maximum punishment should remain high from the point of view of the opponents of the Bill.

Their fear is that it will lead to false complaints. Section 211 of the Penal Code provides a specially heavy sentence for false charges of an offence punishable, as rape is, with transportation or a long term of imprisonment; and it is usual and reasonable in meting out punishment for a false charge to have regard to the punishment which is provided for the offence charged, and of which the person accused has been wrongfully put in peril."

Your Lordship's Petitioners beg to submit that they cannot see the force of this argument. If the Legislature is desirous of giving special protection against malicious charges in a class of cases which —from their peculiar nature, from the fact, as has been sympathetically pointed out by the Hon'ble Mr. Bliss, "that even the institution, to say nothing of the successful prosecution, of such a case will be destructive of the honour and future comfort of the families it affects"—need special protection; if in consideration of these facts the legislature is desirous of giving special protection against malicious prosecutions under the Act, it might easily add a clause to it to the effect that a false charge brought under this law would be severely punished. To make the punishment awardable severe, in order that it may give greater protection against malicious charges is, to say the least, a piece of legis-

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lation which people in this country fail to appreciate.

12. Your Lordship's Petitioners solicit Your Lordship's particular attention to the remarks quoted above from the speech of the Hon'ble Mr. Bliss, the only member of Council, excepting His Honour the Lieutenant-Governor of Bengal, in whose speech some gleams of sympathy for the feelings of the opponents of the Bill may be seen. "The mere institution of a case under the measure will" he justly observes, "be destructive of the honour and future comfort of the families it affects." Under this circumstance it is not strange that throughout the length and breadth of the land, the deepest anxiety has been felt in view of the danger that false cases under the law might be brought forward by the Police or by designing men, as an engine of the very greatest torture to which the people of this country, who are keenly sensitive as regards the honour of their women, might be subjected. When, the Bill came for consideration and thus the question of the character of the Police of the country came indirectly to be judged, people from one end of the country to the other exclaimed with one voice that the Bill would be an engine of oppression at the hands of the Police and other designing men, and even those that were foremost in sup-

porting what has been called "the principle of the Bill,"—the handful of so-called reformers and others, chiefly belonging to communities that have cut off their connexion with Hindu Society—even they were anxious that the Bill should be safe-guarded so that it might not be turned into an engine of oppression. To remove the apprehensions so widely felt, the recommendations of several authorities and the High Court of Calcutta were adopted and a section was added to the Bill to the effect that only Magistrates of the highest class should be permitted to take cognizance of offences under the Act, and where an investigation by a Police-officer with respect to such an offence is deemed to be necessary, the investigation should be made by an officer of a superior rank (that is of a rank not below that of an Inspector). Now this safeguard has not been considered sufficient by the people. Sir Charles Elliott, the Lieutenant-Governor of Bengal in his remarks on this point observed,—"I agree with him [the Hon'ble Mr. Hutchins] in thinking that there is not sufficient ground for the wave of hostile feeling to the Police which is passing over the country; and I am by no means prepared to admit that they deserve all the evil said of them. Still the distrust does exist, and the practical administrator has to reckon with it. * * *

In the present instance, it appears to me that the Bengal Government may with propriety make known to the District Officers its wishes on two points. One of these is that no action should be taken by any Magistrate except on really trustworthy information brought by persons who may reasonably be held to have knowledge of the fact they assert to have occurred; a prosecution should not be instituted on an information laid by any man out of the street who may be a private enemy or a retailer of gossip. The other point is that when the Magistrate of the District does decide to allow a prosecution to be instituted under this new section, it will be advisable for him to act under the power given by Sec. 202 of the Criminal Procedure Code. Under that section if any Magistrate.........sees reason to distrust the truth of a complaint, he may, when the complainant has been examined, postpone the issue of a process for compelling the attendance of the person complained against, and either enquire into the case himself or direct a previous local investigation to be made by any officer subordinate to himself, for the purpose of ascertaining the truth or falsehood of the complaint.

In such circumstances I should advise him to entrust the investigation of the case preliminary to the issue of the process not to any Police-

officer, however high in rank, but to one of the Deputy Magistrates who are Natives of the country and subordinate to himself. I am informed by those who have a right to speak on the subject that the people of Bengal, have great and well deserved confidence in the Subordinate Executive Service and that if they are assured that the investigation into the facts will generally be left in the hands of an experienced Deputy Magistrate, it will do a great deal to allay the alarm which is now so generally felt." Now these directions which His Honour says that he will give to the Magistrates under him, are good so far as they go and the people are thankful to His Honour for saying that he will give the directions. But the people have reason to complain that the safeguards spoken of by His Honour were not incorporated with the Act itself, and thus made part of the law which the Executive Government would have been bound to obey, instead of leaving them to be adopted or not as the Executive Government thought fit. Other heads of Local Governments may not think it necessary to adopt Sir Charles Elliott's safeguards and his successor in Bengal also may not follow the course prescribed by him. It is also to be noted that His Honour says that he will direct District Magistrates to leave the investigation into the facts of cases under the Act, *generally* in the

hands of experienced Deputy Magistrates, so that in the exercise of the discretion to be vested in them, whenever District officers are so pleased, they may leave the investigation in the hands of European Police officers instead of experienced Native Deputy Magistrates. The assurances given by His Honour the Lieutenant-Governor of Bengal, therefore, can not be considered sufficient; and the fact that no safeguards corresponding to the assurances given by His Honour, such as they are, were allowed to be introduced into the law itself, can not but be significant in the eyes of the people.

13. Another fact may be mentioned in this connexion. The Legislature was requested that to avoid public scandal provision might be made that cases under the new law should only be taken up *in camera*. To this request Sir Andrew Scoble gives the following reply. "As regards the publicity to be given to proceedings under it [the measure], the Magistrate has an absolute discretion, under Section 352 of the Criminal Procedure Code, to exclude the public from his court, if he thinks fit. In this and in all other matters the experienced officers, to whom alone the investigation of cases between husband and wife will be entrusted, may be relied upon to act with all the circumspection which the exercise of so delicate a jurisdiction may demand."

Here again is to be observed the unwillingness to limit by statute the discretion of executive and judicial officers in cases when what the people hold dear and sacred, their family honour, is at stake. The people are told that the executive will not be found wanting in exercising their discretion properly; but that discretion shall not be fettered by the Legislature, so that it is upon the mercy of the Executive and not upon that of the Legislature that the people must depend for the maintenance of the honour of their family. This is only in keeping with the unsympathetic way in which the whole business has unfortunately been conducted from beginning to end.

14. The people earnestly prayed that in order to safeguard the Bill, it might be provided that no complaint under the new law might be entertained unless made by the violated child-wife or her lawful guardians. It is admitted, as indeed it could not but be admitted, that it would be extremely difficult if not absolutely impossible to establish a complaint under the new law if the wife withheld her evidence and the husband denied the commission of the crime. So that practically there would be no conviction except in cases where the child-wife herself complained or her guardians complained for her. This being the case, there was no harm in making the concession so earnestly prayed for by the people, which would

have gone a great way to allay, or rather would have altogether allayed the serious apprehensions entertained by them that the new law might easily be turned into an engine of diabolical oppression by designing men. Sir Andrew Scoble observes on this point. "Another proposal has been made that no prosecution shall be allowed except at the instance of the child-wife herself, or her natural guardians or some blood-relations. The adoption of this suggestion would undoubtedly reduce the law to a dead-letter, for it is to be feared that all the influence of the family would be used to screen the offender rather than to protect the victim" But if the wife or the members of the house-hold do not come forward to give evidence, how can the law be prevented from being a dead-letter? Here again it is to be borne in mind that the new law would not be necessary in cases of bodily injury which would come, as they have hitherto come, under other sections of the Penal Code and culprits could easily be prevented from escaping conviction, as it is said they have some times done under the existing law, by amendments therein, one easy form which the amendment might take having been suggested above. If in the only class of cases, *viz.* of sexual intercourse without hurt to the wife between 10 and 12 years of age, to deal with which the present law is necessary, no conviction can be secured if the wife withholds her

evidence, where would be the harm in laying down at the earnest entreaty of the people, that no prosecution under the law shall be allowed except at the instance of the child-wife herself or her lawful guardian? When it is remembered that a successful prosecution under the law, means absolute ruin to the poor injured wife herself whose lot in life, if indeed she does not lay violent hands on herself, would thenceforth be unspeakably bitter and who when her husband is undergoing his term of transportation or imprisonment, may even be driven to a life of shame—(the Hon'ble Mr. Bliss has said. "I concur with the opponents of the Bill that the unfortunate child-wife will, in such cases, be at least as great a sufferer as the husband to whom she has yielded, or who has taken advantage of his position to injure her against her will.")—when all this is remembered, would it not be desirable, at least on the first introduction of a measure like the present, to allow prosecutions only upon the complaints of the persons who would suffer most by successful prosecutions? The Bill was introduced in the name of humanity. But in this first measure of social reform by legislative enactment, it would not have been amiss to guard against the inhumanity of driving to suicide or consigning to life-long misery poor child-wives who do not themselves choose to complain against their husbands.

Your Lordship's Petitioners therefore humbly pray that even if your Lordship may not see your way to veto the measure, Your Lordship will at least be graciously pleased to direct that the measure be amended by the introduction of this important safe-guard.

15. Your Lordship's Petitioners beg also to submit that another suggestion had been made to soften the disastrous incidence of the law upon child-wives for whose protection it has been enacted. Earnest prayers had been addressed to government to make the offence compoundable. But the Indian Legislature has not thought it fit to listen to this prayer. The Hon'ble Mr. Hutchins says on this point, "The child-wife herself would be exposed to intimidation or further brutal treatment in order to prevent her from complaining or to induce her to compound, if the offence were compoundable, as it must be if a complaint were made essential." This, Your Lordship's Petitioners humbly submit, betrays a lamentable misconception of the domestic economy of the people of this country. Members of Council have shown better knowledge of that economy when they have said that few, if any, prosecutions would be made under the new law and that it is not desirable that there should be many prosecutions. So long as the law is not approved of by the conscience of the nation, so long as the punish-

ment awardable is in their opinion inhuman, and the consequence of conviction, the suicide or lifelong misery of the unfortunate child-wife, there will be no *bonâ fide* prosecutions under the Act. If the punishment, is made reasonable, a month's imprisonment or fine would be sufficient for all cases in which there is no bodily injury (for which as has been repeatedly said there are other provisions of the Penal Code); if the offence is made compoundable, so that after the delinquent has been taught a severe lesson, it may be possible to save him and along with him his poor child-wife from irreparable ruin, the conscience of the people may be enlisted on the side of the law; and it may directly bear good fruit. As it is, it is hopelessly against the grain, and no prosecutions except such as are inspired by malice or instituted by designing men, will ever be made.

16. Your Lordship's Petitioners beg humbly to point out that the reason why malicious prosecutions are so much feared in a case like this, is that a man's character is his best defence against almost any charge under the criminal law of the country. But in cases of this kind, this defence will be wanting. There will be no antecedent improbability in a young man's being guilty of this new crime or of his parents and guardians (especially female) being abettors of the crime. A man's well known

character, again, prevents malicious charges from being made against him; but here this detterrent will be wanting.

Your Lordship's Petitioners beg also to submit in this connexion that from the fact of there being no system of Registration of Births in the country (the Registration of births in the few municipalities thinly sprinkled over the country being also perfunctory), parents have no ready means of proving the ages of their girls; so that even if a girl is above 12, they will not be safe from the risk of malicious prosecutions.

17. Then again Your Lordship's Petitioners entreat Your Lordship to note the remark made by the Hon'ble Mr. Bliss, namely, that "even the institution, to say nothing of the successful prosecution, of such a case will be destructive of the honour and future comfort of the families it affects." The only way to allay the dismay with which the people regard the measure is to make it comparatively innocuous, by the adoption of the suggestions made above.

The practice complained of, obtains only among the ignorant and lower class people in some parts of the country, and may also have crept among a class of people, with whom the precepts of their own religion have lost their hold. It is really

opposed to the spirit of the Hindu Sástras and is repugnant to the feelings of the majority of the people themselves. Such being the case, a reasonable measure would enlist the sympathy of the people, whereas the present one has only had the effect of filling their minds with a deep sense of pain and humiliation. How much such a state of feeling is to be deplored, and how it would stand in the way of true reform, it would be superfluous for Your Lordship's Petitioners to point out.

18. The members of the Legislative Council depend chiefly, not upon the direct, but upon the educative value of the measure. Sir Andrew Scoble when introducing the Bill said "The other objection is that Legislative action is not likely to have much direct result. This may be so; but for my part I shall be content if the effect of legislation is mainly educative......" and His Excellency the Viceroy also remarked, "Nor, again, can we join with him [Sir Romesh Chunder] in thinking that because there have been no prosecutions under the existing section of the Penal Code with its ten-year limit of age, that section can be regarded as having no effect, or as I think he described it a 'dead-letter.' I believe that I shall be confirmed by those who are more familiar with Indian Legislation than I am when I say that the effect of the law in this country is often valuable quite as

much from its educative operation as for any results which it may lead to in the matter of legal proceedings or prosecutions."

It is not too much to say, as it has been said by the Hon'ble Sir Romesh Chunder Mitter, that the good effect of the measure would be neutralised by the bad effect in the direction of perjury and corruption to which the measure as it stands will throw the door wide open. If however the law were so modified that it would harmonise with the feelings of the people, if it did not award too severe a punishment, if it allowed complaints only from the persons aggrieved and not from strangers, if it made the new crime compoundable, the feeling that is now enlisted against the measure would be turned to its support.

There is one other point without which, however, the law will not harmonise with the people's conscience, and that point is that the age of puberty should be fixed instead of the hard and fast 12 years age. Of this however, Your Lordship's Petitioners will have to speak more in detail below.

19. Your Lordship's Petitioners beg leave to submit, that the considerations above set forth are so obvious that it is generally felt that if the object of Government had simply been the reform

of the particular evil practice complained of, Government could hardly have failed to see their force; and a great misgiving is felt that the real object of Government is not the removal of the particular practice, but the abolition of early marriage itself. Some colour is given to this apprehension by the conduct of some influential supporters of the measure. The *Pioneer* Newspaper of Allahabad which, in this country, is regarded as almost an official paper, observed immediately after the introduction of the measure that it would strike a blow on the system of early marriage. The so-called reformers who brought pressure to bear upon the Government to introduce the measure, have all along been agitating for the abolition of early marriage. In the earlier stages of their campaign they had not thought of pointing out and laying stress upon this particular evil, which plainly shows that the evil is not of such frightful magnitude as it has since been represented to be. The famous *Hari Maiti* case became a sort of God-send to the agitators. Here, they thought, was a lever by which the British public and, through it, the Government might be moved, and the result shows that they had not made a miscalculation. The Members of the Council in their speeches have also more than once referred to the evil custom of early marriage. Sir Andrew

Scoble said, "I have no sympathy with the pseudo-social reformers who talk glibly on the subject, and do nothing. If they honestly believe their marriage customs are bad, let them follow the example of the Sardárs of Rajputana, and amend them." This is a clear allusion to the abolition of early marriage, which is the reform that the Sardárs of Rajputana are praised for having attempted, with some success, to carry out. Besides, the Hon'ble Mr. Hutchins has made the allusion clear. In the course of his speech he says, "The Rajputs of Jaipur and other Rajputana States have shown them one way in which this [" the eradication of the cause of all the evil" *viz.* early-marriage] may be done, for without sacrificing one jot or tittle of their religion they have laid down for their own guidance satisfactory canons regulating *the age of marriage.* Would that the leading men of Bengal could be persuaded to do the same!" It may be remarked, in passing, that if the policy which the Government had followed in regard to the Sardárs of Rajputana, namely, that of taking the leaders of the people into its confidence, and of carrying on the reform gradually through them by purely social as distinguished from legislative machinery, —if this wise policy, had been adopted in the British territories also, instead of the introduction all of a sudden and without any preparation what-

ever of penal legislation of unusually severe character, its efforts might have been crowned with similar success. A stringent penal law awoke only the fears of the people. Gentle remonstrance with and advice to the leaders of the people and an endeavour to organise through them a strong reform-organisation might, indeed, have been attended with the desired results. But such sympathetic course was not to be followed in the case of British subjects. It had been followed only in the case of the subjects of certain feudatory chiefs of Rajputana. But to return. The Hon'ble Mr. Hutchins said, "It is said our Bill does not go far enough, that even if we cannot give protection up to puberty *we might at least prohibit early marriages.* The Legislature certainly has power to do this, but it would involve an interference with religion, and with social customs not necessarily harmful, which I personally,—and I believe that I am also expressing the sentiments of all my hon'ble colleagues—would be most reluctant to undertake. In our opinion, if I may speak for them as well as for myself, the people themselves should be left to weigh the possible advantages of early marriage against the obvious disadvantages, and if in their judgment, the advantages preponderate, *we do not* AT PRESENT *see any safe or sufficient reason for prohibiting the constitution of*

the marital relation at any age which they may prefer." The Hon'ble Mr. Nulkar said, "My countrymen are too law-abiding to actively obstruct or resist the law for any length of time. In this case the result will be that some far-seeing, though few men will make a beginning *by keeping their daughters unmarried till twelve years*—as my Hon'ble friend Sir Romesh Chunder Mitter himself foresees—*rather than run the risk of breaking the law.* And past experience tells us that such wise and wholesome examples, will be more and more followed by others throughout the country. I confidently expect that it is in this direction that this law will ultimately become a dead letter, or rather obsolete." And lastly His Excellency the Viceroy himself said, "I have already explained the reasons for which we have been unable to accept the suggestion, which has been made to us, that we should abandon our intention to raise the age of consent and deal at once with the whole question of the marriage law by invalidating all marriages contracted with a woman below the age of twelve. *A change of the law in this direction is one which will, I trust, ultimately be demanded by the Hindu community itself.* It is not one which, *under existing circumstances*, we are prepared to impose upon that community." [Liberty has been taken to Italicise certain passages of the extracts from the speeches].

From these extracts it is easy to understand how the communities of India may readily entertain the suspicion that it is only to prepare the ground for the abolition of early marriage that the Act has been passed. The severe punishment provided in the Act and the fear of malicious prosecutions hanging before their eyes, may make them prefer the abolition of early marriage itself to a measure of this kind. And except in the case of men who deeply respect the religion in which they were born (even Sir Andrew Scoble has said 'I can quite understand that there may be men who place religious duty above all earthly laws'), the majority of the people would perhaps prefer a civil law invalidating marriage under 12 years of age to the present measure, fraught as it is with such serious dangers for them. Your Lordship's Petitioners humbly submit that there are many men to whom this view of the intentions of Government appears, to be almost self-evident; for, if the abolition of the evil complained of were the only object of the measure, Government would not certainly have refused to modify the Bill in accordance with the strongly expressed wishes of the people, by which the Bill might have been workable. As it is, the Bill for the particular purpose for which it is said to have been introduced would be nearly a dead-letter; but by subjecting the people to a

terrible fear, it may easily have the effect of making them desire to get rid of so terrible an engine of oppression by the abolition of early marriage. Your Lordship's Petitioners can hardly believe that a strong Government like the British Government of India, would lower itself before the public by taking indirect means to gain an object which it is not quite so easy or *safe* (to use the word of the Hon'ble Mr. Hutchins) to gain directly. But they beg to submit that as the belief really has found its way in the minds of men, a strong and just Government should take care to disabuse the public mind by so modifying the law that it would be impossible to hold the unfortunate belief.

With regard to early marriage itself, Your Lordship's Petitioners beg to submit that though the custom is regarded as pernicious by Europeans, they ought to be able to see that it has many a redeeming feature. When the girl is yet of very tender years and is impressionable like soft clay or wax, her duty in regarding her husband as her lord is impressed on her mind. The God on earth, whom she is bound to love and obey for life, is placed before her, ere her child's mind has learnt to be disturbed by thoughts of woman's love for the other sex, so that the words put by Milton in the mouth of his Eve, addressing her husband,

come to her with a sweet naturalness, not to be found in any country where late marriages are in vogue.

"My Author and Disposer, what thou bidst
Unargued I obey: so God ordains;
God is thy law, Thou mine. To know no more
Is woman's happiest knowledge and her praise."

If in Europe where the 'subjection of women' is regarded as a great evil, such sentiments are considered fit only for a Negro slave, they are still the sentiments that sway the mind of the Hindu wife; and this is entirely owing to the Hindu system of early marriage. Hence it is that there is no home on earth where love and peace reign so supreme as in the Hindu home—and hence it is that that keen and sympathetic observer, Lady Dufferin, has said in her article on "Women of India" in the Nineteenth Century for March last, "They (the Indian women) know nothing of the outer world, nor on the other hand are they exposed to many of its trials and temptations; and it may be that what their life loses in interest and variety, it gains in peace and security. Indeed, I can imagine many a weary and toiling woman, in this our overcrowded and busy world sighing for such a harbour of refuge as the Zenana might appear to her to afford." With the destruction of the sys-

tem of early marriage, many things that the Hindu prizes so much—his jonit family system, the purity of his women, the peace and happiness of his domestic life, the sanctity of his zenana—all these will be inevitably destroyed. Your Lordship's Petitioners beg, with all deference, to say that it is a great mistake to suppose, as it is usually supposed, that the position of women in Hindu Society is inferior to the position of women in Europe. The Hindu applies to his wife the noble term of *Sahadharmini* (*i. e.*, help-meet in duty and religion), a term the equivalent of which it is vain to seek in other languages of the world. The fact of the Hindu woman being constantly engaged in domestic duties, which her European sister is accustomed to regard as drudgery, should never be regarded as a disgrace, but should rather be regarded as a high honour. For the last word of European philosophy on the function of woman in society is that the home is the proper sphere of her activity. In the Hindu home she is the fondly cherished daughter to part from whom is to the Hindu a pain which can hardly be realised in Europe; the beloved wife, who is the absolute mistress of his household and all whose wishes he is ever ready to carry out; the revered mother whose word is law and whom to cherish and protect is his greatest duty and highest privilege. No nation

really honours their women more than the Hindu does. In the words of the great Hindu lawgiver women deserve worship, they are the light of home, in fact there is no distinction between a woman and *Sri'* herself, the goddess of prosperity.

The whole social system of the Hindus is indissolubly bound up with the system of early marriage; and the evils of the system must be tolerated or eradicated, if possible, by gentle means without striking at the root of the system itself. It must be remembered that if the system of early marriages has its evils, other systems have evils of their own from which the Hindu system is almost absolutely free. No social arrangements, in this imperfect world, are perfect, and it would be a grievous misfortune to India, if, in order to remove some evils incident to the system of early marriage, the system itself were destroyed. This system of early marriage in India has been a growth of ages; as was mentioned in a note submitted to Government in continuation of the Memorial from Báli and Uttarpárá in connection with the Consent Bill (Appendix C. p. 50)—" we can trace in the Hindu *Sástras* the very beginnings of civilised societies; we can see that the age of the marriage of girls, from a long time after the interdiction of promiscuous intercourse, must have been after puberty, that the evils of late marriages, especially in

a society which is based upon the institution of caste and in which the joint-family system plays so important a part were successfully combated by a gradual lowering of the marriageable age of girls below the age of puberty; that there has been a systematic plan in all this; and that to raise the marriageable age of girls (which after all must be considered to be the end and aim of all legislation like the present one) would be a most retrograde movement according to Hindu ideas and beliefs." Nor must it be forgotten that the institution of early marriage is also connected with the solicitude which the Hindu religion, manifests, at every turn, for the begetting of a son as soon as possible. It is only by begetting a son that the debt due to one's ancestors can be repaid and provision can be made for the due performance of the all-important funeral rites, the offering of oblations and *Pindas* (funeral cakes) &c. Seeing that life is fleeting, a Hindu must not miss the earliest opportunity of begetting a son and women also must have as early an opportunity as possible of becoming mothers of sons. This may no doubt seem extremely puerile to the European mind, but it is undeniably the very life-blood of the Hindu religion.*

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* Sir Henry Maine observes,—"It sounds like a jest to say, that according to the principles of Hindu Law, property is regarded as the means of paying a man's funeral expenses, but

Your Lordship's Petitioners therefore beg humbly to appeal to your Lordship's generous English instincts to save the Hindu nation from the wrong and the shame of interference with their ancient customs. Though a subject nation they had hitherto been left in almost perfect freedom in regard to their domestic economy, and this just, wise and generous policy has had its reward in evoking a devoted loyalty to a foreign government unexampled, perhaps, in the annals of the world. The present Act has been a rude shock to the people's sense of perfect security from interference in their domestic matters, and unless it is disallowed by Your Lordship or at least considerably modified, the fear is entertained in many quarters, that the devoted loyalty, the pride, almost, that the people have for sometime past been accustomed to feel in their great rulers and their glorious achivements, might give place to at best a helpless acquiescence of foreign domination. As for social reform, all reasonable men, Your Lordship's Petitioners submit,

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this is not so very untrue of the written law, concerning which the most dignified of the Indian Courts has recently laid down, after an elaborate examination of all the authorities, that "the right of inheritance, according to Hindu law, is wholly regulated with reference to the spiritual benefits to be conferred on the deceased proprietor."

Village Communities, Third Edition, p. 53.

ought to be satisfied with the powerful engine of western education which England wields with so much effect. Let not reforms be again thrust on them by Acts of the Legislature. It is now generally admitted that the English have, through their inability to appreciate the value of Indian institutions, destroyed many of them, to the great loss and suffering of the people. The following remarks of Dr. Congreve are so apposite that they may here be quoted.

"If I return on any more general Indian question, it is only to emphasize what I said in my last Circular, as to the true attitude of the Indian Government whilst it remains in the hands of Englishmen. There is an increasing pressure brought to bear upon it in the opposite direction. With the usual English feeling of superiority, instead of mending ourselves we are but too anxious to intrude our crude actions on others as necessary reforms. This has been seen the last year, notably in relation to infant marriage. A certain evil is seen and there is at once a cry for a legislative reform, a coarse and unwise mode of proceeding. Respect for the civilization on which we have thrust ourselves, and patient waiting for its own change from within, where change is desirable—we cannot too consistently or energetically assert these principles. The quietest but most

determined resistance to the premature enforcement of the revolutionary ideas of the West, to its interference on such questions, however specious the grounds for such interference, this is the course I should be glad to see adopted by Indians of all classes."

But all that the English, have hitherto destroyed will be as nothing compared to the destruction of the system of early marriage. The law that has just been passed, threatens this system and hence the strong outburst of opposition that it has met with. Many Members of Council have taken upon them to predict that the agitation against the Bill would cease as soon as the Bill is passed. Your Lordship's Petitioners, however, venture to think that, unless the law is so modified as not to be a menace to the system of early marriage the agitation will not cease; unless government thought it fit to suppress all outward manifestation of the discontent that the measure has evoked throughout the length and breadth of the continent and specially in Bengal, and, therefore, to stop all agitation by an arbitrary exercise of power, the agitation will go on increasing in volume and intensity and falsify the predictions made in Council by members who have at one moment tried to ignore the agitation by the make-believe that it was confined to only a small

section of the people, and have at another moment virtually admitted it by saying that it was not genuine but was due to ignorance of the people and misrepresentations of certain professional agitators. If the agitation was the consequence of misrepresentations by professional agitators, why was time not given for which the opponents of the measure had so earnestly prayed? The following passage from the Note submitted by the Báli Uttarpárá Committee in continuation of their memorial, on the eve of the passing of the measure (Appendix C. pp. 62—64) may here be given.

"The Committee beg to observe that unless Government is satisfied that the Bill in its present form does interfere with the Hindu religion, or is prepared to take up the position that in a matter like this it is not bound to regard the Hindu religion but that, as in the case of *suttee*, it can abolish what it considers a pernicious custom—unless Government is prepared to take up this position, it should, before passing the Bill, publish the opinions received by it and the grounds on which it considers why the measure would not interefere with the Hindu religion. Unless an opportunity is thus given to the people to explain the texts and answer the arguments brought forward in support of the Bill, they will have reason to consider themselves, as hardly used. The position taken up by

the Hon'ble Sir Romesh Chunder Mitter that the Legislature as at present constituted is not competent to decide a *Sastric* controversy like the present, is certainly a strong one. In a matter like this when a large section of the Hindu people feel and state that their religious beliefs and practices would be interfered with, Government ought to accept the statement, without going into the question whether their beliefs and practices are justified by the *Sástras* or not. That is entirely the people's affair. Government has only to inquire whether the feeling and the practice exist or not as matters of fact. If, however, Government is pleased to think otherwise the Committee beg most respectfully to pray that an opportunity may be given them, before the Bill is passed, to meet the *Sastric* arguments advanced in support of the measure. It is true that to do this, it would be necessary to postpone the passing of the Bill for some time. But the matter is not of such urgency that it cannot be so postponed. When it is borne in mind that the Bill was introduced into the Council only on the 9th of January last, that before its introduction the people had not only had no inkling of the intentions of Government in this matter, but had actually fancied that they could afford to disregard the foul libels on their society uttered by over-zealous

reformers as the Indian Government could not undertake Social reforms by Legislative enactments after the statesman-like decision of Lord Dufferin's Government so late as in 1886,—when all this is borne in mind, it will not, it is hoped, be considered unreasonable if the people think that the space of 69 days (from the 9th of January to the 19th of March 1891, when it is said it would be passed into law) is hardly sufficient time to allow for the discussion of such an important measure which would vitally affect the well-being of Hindu Society, and which, they sincerely believe, would involve interference with their religious and social customs. Not even to accede to this humble request would argue a want of sympathy with the people which the past conduct of Government had not prepared them to apprehend."

His Excellency the Viceroy in his speech in Council when the Bill was passed was pleased to observe,—"I can not therefore bring myself to share the opinions of those who would have us postpone the passing of the Bill in order to give time for further discussion—time which would be used for the purpose of still further unsettling the public mind, and misrepresenting the scope and intention of the measure." Other Members of Council have made similar remarks. But it is

the Viceroy's remarks that have filled the mind of the people with deep pain. But it may pertinently be asked that if the majority of the people and almost all the men of light and leading in the country, were in favour of the Bill, as it was stated in Council, how could it be supposed that a longer time for discussion would have the effect contemplated by His Excellency? If almost all the best men were on the side of Government and also the vast majority of the people, how could the public mind have been further unsettled? The misrepresentations of misguided agitators would have been exposed by the enlightened supporters of Government, who according to the theory form all but the whole phalanx of the educated men of the country. Every day added to the discussion would have served only to discredit the agitators and to make manifest the wisdom of Government. Your Lordship's Petitioners humbly think that this position is simply unanswerable and that the matter is too serious for the Government to shut its eyes to. Never before since the dark days of the mutiny, was the country so deeply moved; never before was so lively a sense of danger felt for the religious and social customs of the people. No one can foretell what the consequences may be; and devotedly loyal subjects of Her Gracious Majesty, like Your Lordship's

Petitioners can only say that they feel a sense of alarm and uneasiness, unfelt by them before.

20. Your Lordship's Petitioners beg humbly to submit that an attempt to violently introduce a reform in the Hindu Social System must necessarily be attended with grave evils; the whole system being a consistent and coherent one, it can not be rudely tampered with in one part without being injured in other parts. On this point the following remarks of Professor Seeley in his 'Expansion of England' (p. 305) may fitly be quoted "Our Western Civilisation is perhaps not absolutely the glorious thing we like to imagine it. Those who watch India most impartially see that a vast transformation goes on there, but sometimes it produces a painful impression upon them; they see much destroyed, bad things and good things together; sometimes they doubt whether they see many good things called into existence." These remarks of a great philosophical historian contain a warning which the Indian legislator should never forget. A seeming reform may be introduced by the stroke of a pen. But the remote and indirect effects of the measure are not easy to calculate and it is the firm conviction of Your Lordship's Petitioners that in the present instance, the evil effects will far outweigh the good. If the measure were modified and safeguarded in the manner indicated

above, it might have produced some good ; as it is, its evil effects will far outweigh any good that it may do. Your Lordship's Petitioners can not point out all these evils ; but it seems necessary to mention one or two. One has already been suggested above, *viz.* that the measure threatens the system of early marriage and which, as has been mentioned, is the very basis of Hindu, Society and, it may be added, of Mahomedan Society as well. The good points of early marriage have been briefly indicated above. But whether the system can or can not be defended in the abstract, is not of much consequence. Hindu social economy has not the necesary fitness for a system of society in which late marriages obtain If Hindus are compelled by the fear of a terrible penal law to delay the marriage of their girls, many evils will creep into the society from which it is now almost perfectly free.

Another evil effect of the law will be to introduce a sort of inquisitorial espionage into the privacy of the zenana and will go a great way to bring intolerable unrest where peace and security dwelt before. This objection to the law is so strong that the Viceroy has candidly admitted its force. His Excellency says, "I will now pass for a moment to the third great objection which has been raised against the measure. It is the objection founded upon the anticipation that it will

lead to inquisitorial action by the police, to prosecutions instituted from vindictive motives, and to criminal investigations into family matters of the most domestic and private character. Of this objection, I will say that, whatever may be our opinions with regard to some of the arguments which have been brought forward against the Bill, there can be no doubt as to the perfect sincerity with which this argument has been urged upon us. The apprehension considering the conditions under which a great part of the population of this country lead their lives, is a perfectly natural one: we should, if we were situated as they are, probably entertain a similar apprehension ourselves." In answer to the argument which His Excellency has so well put, His Excellency has only entreated the public to be cautious how in this or in any other case it allows itself to be too much influenced by arguments founded upon the possibility that a new law is likely to be abused in this manner." This, of course, though the Viceroy has said it, car not really be expected to allay the public apprehensions. Had the safe-guards so earnestly prayed for by the people been adopted the result might have been otherwise. The measure if it is meant to work, can not possibly work without a system of espionage, and already there is talk of what are called "Vigilance Committees" being established.

If an offence under the law is committed, who will bring the matter to the notice of the Magistrate? Not surely the family of the husband,—they can not wish to send their boy to transportation for life. The family of the wife will not do it,—they can not see their girl doomed to a life of widowhood. Who then will be the complainant? Some spy or some busy-body, or some enemy. The establishment of this sort of espionage would be a deplorable evil, fraught with terrible moral degradation to the people.

The difficulty of one nurtured in a different social system who, perhaps, looks upon other social systems as hardly deserving of toleration, is exemplified by the advice which Sir Andrew Scoble has given to the people of this country in the following passage of his speech,—"Surely advantage might be taken of the passing of this Bill to restore the practice which formerly prevailed in Bengal, and which still prevails in the neighbouring provinces of Behar and Orissa, under which a girl is not sent to her husband's house until she is mature enough for cohabitation." Your Lordship's Petitioners have no personal knowledge of the state of things in Orissa or Behar or in Bengal formerly. But this they have a personal knowledge of, that in the peculiar joint-family system of Bengal, it is absolutely necessary for the peace of every household that a

girl should come and live in her husband's house as early as possible, so that she might be trained in the ways of her husband's family; that her mother-in-law might form her mind in her own way, as otherwise all peace and domestic harmony for the family would be at an end. The system of society where the mother has usually to leave the house before the advent of the son's wife, is entirely different from the system of joint-family society of Bengal. Three and often even more generations live together under the same roof-tree and in such a society it is absolutely necessary that the brides must be brought home when their minds are soft and impressionable and can be moulded in the fashion in which the elders of the family wish it to be moulded. It is not likely that the force of these representations will be felt by those who can have no experience of the domestic system of Bengal; but Your Lordship's Petitioners beg most humbly to assure Your Lordship, that the more they think upon the measure, the more it appears to them to be fraught with dangerous import to the well-being of their society. They are not prepared to live as the Europeans, and they will not be allowed to live in their own way. The consequence to them, therefore, can only be simply disastrous.

21. Your Lordship's Petitioners beg now to

submit their strong objection to the Act on the ground of its interference with their religion, and consequently, of its violation of Her Majesty's Great Proclamation of 1858.

This objection was set forth fully in the Báli and Uttarpárá Memorial and the notes submitted in continuation of the Memorial all of which have been appended to this Petition. (Appendix C.) An impartial examination of the facts and arguments there adduced will convince every candid person, that the new law will interfere in the case of girls who attain puberty before 12, (and the proportion of such girls on the best medical testimony available is about 35 per cent.) with the performance of a certain Hindu religious ceremony, called *Garbhádhána* or *Punarviváha*, which according to the custom of Bengal, at any rate, has to be performed on the occasion of a girl's attaining the age of puberty (as evidenced by the first appearance of the catamenia after the girl's 10th year), of which religious ceremony the consummation of marriage is the most important part; and that therefore the new law will do violence to the religion of the Hindus or at any rate of the Hindus of Bengal. It has been said that the custom is not universal among the Hindus of all parts of India; that even in Bengal many families do not observe it: that in ancient days when marriages

were permitted after puberty, the ceremony in question was not and could not be, always performed on the very first appearance of the catamenia; that the *Sástras* recognise certain exceptions to the performance of the ceremony as on the occasions of a husband's absence, imprisonment, sickness and the like; that the penance provided in the *Sástras* for the non-performance of the ceremony is not of a severe character; that some scholars, though chiefly Europeanised scholars, maintain that the ceremony is not obligatory on the very first occasion;—these and similar things have been urged to minimise the force of the religious objection. But after all is said, the fact remains that the religious custom *does* obtain in Bengal, no matter if it does not obtain in other provinces, and if even in Bengal it is not observed by all Hindus; that a religious custom has all the force of a religious duty enjoined by the *Sástras*, unless it can be shown to be condemned by them which, it is superfluous to say, has not been and could not have been shown in the present case; that the genuine Pandits of almost all parts of the country, and especially the Pandits of Bengal and Behar who assembled in large numbers at public meetings to protest against the Bill on the ground of its interference with religion,—Pandits, in fact, who are the responsible teachers of Hinduism and whose opinion

on *Sástric* questions the people accept as a matter of course and without any question—all these Pandits including all the profound Sanskrit Scholars whom Government itself honoured with the title of Mahámahopádyáya, among whom is the well-known Mahámahopádyáya Mohesh Chandra Nyayaratna, C. I. E., the able Principal of the Government Sanskrit College of Calcutta, whose devotion to Government is well-known in the country, and including the venerable Pundit Iswar Chandra Vidyáságar, the father of social reform in Bengal and by common consent the profoundest Sanskrit scholar of the day,—all these have in unmistakable terms given it as their deliberate opinion that the Act *will do* violence to the Hindu religion by interfering with the performance of the ceremony in question at the proper time in " an appreciable percentage of cases " to use the expression used by the Hon'ble Mr. Evans. It is in a manner admitted that the Government is not competent to decide the question whether a certain religious custom ought or ought not to be considered to have a binding force according to the Hindu *Sástras*. If the custom exists and the people believe that it is their religious duty to observe the custom, there the matter ends. It must, so far as the Government is concerned, be regarded as a religious belief and to interfere with such a belief would be a violation of

the Proclamation. The Government therefore to get rid of the religious difficulty has, in a manner. been compelled to hold that the Proclamation is not to be taken as absolutely debarring Government from all interference with the religious beliefs of its Indian subjects, but that if in the interests of good government, humanity, morality and civilization, Government considers it necessary to interfere with any religious belief it is quite competent to do so; in fact the Proclamation is always to be taken with these reservations.

22. Your Lordship's Petitioners will presently address themselves to examine this position taken up by the Government; but they beg to make one or two observations before doing so.

In the first place Your Lordship's Petitioners beg to point out that when the Bill was first introduced into Council, both the Law Member and His Excellency the Viceroy, confidently stated that the Bill, if passed into law, would not do the slightest violence to Hindu religion and therefore there was no danger whatever of any violence being done to Her Majesty's Gracious Proclamation. On the day the Bill was passed both the Law Member and His Excellency the Viceroy were anxious to prove that the Proclamation was no bar to Government interference with Hindu religion in

the interests of humanity, morality and civilization. This can admit of only one explanation, and the explanation is this. When the Bill was introduced, Government had not the slightest knowledge how it would affect the Hindu religion, and accordingly, it made the unqualified assertion that the Bill would do no violence whatever to that religion. But the unanimous protest of the truly orthodox portion of the Hindu Community convinced Government that it would not be safe to rely altogether upon that position, and accordingly, Government was obliged to make this sudden change of front. Indeed the point can hardly be disputed that unless Government had felt the religious objection to the Bill to be a strong one, it would hardly, after its express declarations at the time of the introduction of the Bill into Council, have gone out of its way to make the assertion that in India when religion comes in conflict with morality, it is religion that must give way. This appears also from the singularly weak attempts of Sir Andrew Scoble to meet the religious objection by remarks like the following: "When the neglect of this particular religious observance can be excused by the simple expedient of absence from home, it is difficult to see how any serious conflict of duty can arise in the minds of the most orthodox." To this the

obvious reply is that wilful absence in order to avoid the performance of a certain religious duty, can be no valid excuse for the non-performance of that duty. It is *bonâ fide* absence that can be pleaded as an excuse according to the *Sástras;* and not wilful absence with the object of evading the duty. No man, who thought that the religion of another people might be binding on the conscience of that people, and that the wilful evasion of their religious duty by mean devices, would be regarded by them as not only unavailing from the point of view of religious duty, but also positively dishonest, could for a moment use the argument that the Law Member thought fit to use from his place in Council. The very same reply may also be given to the Law Member's remarks contained in the following passage of his speech—"That the penance for its non-observance is of an exceedingly trifling character. I have not failed to remark that two learned Judges of the High Court of Calcutta, for both of whom I have great respect, have pointed out that 'the formal and outward penance may be simple, but the real efficacy of penance consists, according to the Hindu Scriptures, quite as much as according to reason and common sense, in real inward penitence and a resolution not to commit the sin again.' I can quite understand

that there may be men who place religious duty above all earthly laws, but these men are few; and I think Pandit Iswar Chandra Vidyáságar is nearer the truth when he says 'the punishment which the *Sástras* prescribe for the violation of the rule is of a spiritual character and is liable to be disregarded.'"

The remarks of the two Judges of the High Court entirely dispose of the argument based on what is called the "exceedingly trifling character" of the penance prescribed for the non-observance of the duty. That the penance is not trifling will appear from the description of it given on p. 22 and pp. 37—38 of Appendix C. But the character of the penance has, properly considered, nothing to do with the question. A sin is a sin, whether the penance provided for it is simple or severe, and no man who believes it to be a sin, ought to be compelled to be guilty of it. As it has been remarked on p. 23 of Appendix C, "No penance for a sin can be efficacious unless it is accompanied by a resolution not to commit the sin again, which in the present case is impossible, for the sin will have to be committed month by month for some time. Indeed to ask a devout Hindu—and let it not be imagined that even in these days of unbelief the number of devout Hindus is inconsiderable [Sir Andrew Scoble himself admits that there are a few of them]—

to commit a sin on the ground that it is easy to expiate it by a penance, is about as reasonable as to ask a devout Christian to commit a sin on the ground that one sin more or less does not signify, since the Divine Sacrifice is sufficient to atone for all sins, past, present, and future." Indeed, this argument from the character of the penance can only show that our legislator has no respect whatever for the religious feelings of a Hindu; surely he would not have allowed himself to use it, if he had that respect for the religious feelings of one of a different persuasion, which, happily in these days, is manifested by almost every true Christian of culture and liberality of sentiment.

One word more in regard to this passage. Sir Andrew Scoble has so quoted some words of Pandit Iswar Chandra Vidyáságar as to produce the impression that he had the authority of the venerable Pandit on his side against the two Judges of the High Court whom he has quoted before. He says the Pandit '*is nearer the truth*'; that is, the opinion of the learned Judges is not so true as that of the Pandit. Now it is evident, that the opinion of the Judges and the opinion of the Pandit are on two different points altogether. The Judges say that the efficacy of penance consists not merely in a formal outward observance, but also in a penitent state of mind. Pandit Iswar Chandra Vidyáságar does

not, as indeed he could not, contradict or qualify this opinion. He says something quite different, and evidently in a different connexion. What he says is, that the penance laid down in the *Sástras* is of a spiritual character and is likely to be disregarded—disregarded, that is, by those who are not *truly* religious in spirit, which class unfortunately is the larger in all communities; and he must have made this remark in justification of a penal law by the State, where the *Sástras* have laid down a penance for an offence. The two statements relate entirely to two different matters, and to connect them in the way in which they have been connected is, to say the least, unwarranted. By the way, when the Law Member quoted this part of Pandit Iswar Chandra Vidyáságar's opinion, should he not have distinctly mentioned that the venerable Pandit was entirely at one with the Pandits of Bengal in considering the Bill a violation of the Hindu religion, and that he had given it as his opinion that, the age of puberty therefore, should be substituted for the hard and fast 12 years age, and that no complaint also under the law should be entertained unless made by the injured child-wife herself or her lawful guardians? *—Had only the opinion

* It has been justly remarked that the same process has been followed in the case of quotations made in the speeches in

of Pandit Iswar Chandra Vidyáságar, the great social reformer, been accepted, the people could not have grounds for such bitter complaint.

23. Your Lordship's Petitioners beg to observe, in the second place, that Sir Andrew Scoble and other Members of Council took it upon them to say that the Hon'ble Sir Romesh Chunder Mitter had thought it fit to abandon the objection he had made at the time of the introduction of the measure, namely that as it would interfere with the Hindu religion, it would be a violation of the solemn pledges given to the people by the Royal Proclamation of 1858. Now, Your Lordship's Petitioners humbly submit, that it is not at all correct to say that the Hon'ble Sir Romesh Chunder in his note of Dissent abandoned his position of reliance on the Proclamation of 1858. All that he did was that he did not think it necessary to repeat his argument as His Excellency the Viceroy, in reply to his observations on that point, had distinctly said that the Proclamation was binding upon the Council. Sir Romesh Chunder therefore considered it enough to confine himself to showing that the

Council, from the opinions of other gentlemen also, as for instance of the Hon'ble Dr. Rash Vihari Ghose, who it is understood, had supported only the 'Principle of the Bill,' but had suggested such important modifications therein, as woud have, if adopted, taken away much of its sting.

religious objection did really exist, the inference being plain enough that if the Bill was passed notwithstanding the religious objection, it would be a violation of the Proclamation.

It ought in fairness however, to be observed that Sir Romesh Chunder never contended, as Your Lordship's Petitioners humbly do, that in *no* case the Indian Government could adopt any measure which would go against the religious belief of any section of its subjects. In his speech on the occasion of the introduction of the Bill, he said in the very first paragraph, that for repression of crime of any sort, the Government could do so. But as crimes had already been made punishable under the Penal Code, the Bill did trench upon the provisions of the Proclamatlon as it would, in some cases, interdict the performance of an essential part of an important religious ceremony known as the *Garbhádhána* ceremony. This was Sir Romesh Chunder's position from first to last and to say that Sir Romesh Chnnder abandoned, in his note of Dissent, an important position taken up before, is certainly not correct.

24. With regard to this question of crimes, Your Lordship's Petitioners beg to remark that after the introduction of the exhaustive Penal Code, it can not be necessary to interfere with

Indian religions for the repression of crimes. To make, as has already been observed (the matter, indeed, can not be too much insisted upon), a crime of an act innocent in itself or at worst a vice, by Legislative enactment, is not justifiable. In the present case, it is to be remembered that girls in India often attain puberty before 12, and even become mothers before that age, (which need not be considered too early an age, seeing that 12 in India would correspond to 14 or 15 in England); that this has been the case for generation after generation in this country; that when girls become mothers before 12, they can not be said to be violated by their husbands against their will, so that such an act can at worst be regarded as a vice and not as a crime; and that having reference to the facts and arguments adduced by Dr. Juggobandhu Bose on the authority of European physiologists (*vide* Appendix B) the attainment of puberty at once makes a girl a woman and fit for child-bearing without any detriment whatever to her own health or to that of her offspring. The people of this country therefore can not understand how under the circumstances sexual intercourse with wives under 12 can be made a crime, and such a heinous crime too as requires to be punished by transportation for life or imprisonment for 10 years. Of course if

sexual intercourse with girl-wives causes injury, the husband should be punished; for this there are provisions in the Penal Code and if through any defect in the law these offenders may now escape, the defect may at once be remedied.* But where no injury is the consequence, where, on the contrary, healthy children are born, as every day experience shows, it is certainly monstrous in the eyes of the people of the country, to punish husbands for rape with transportation for life or 10 years' imprisonment. It has been pointed out that the operation of the Act may send a husband to transportation, for having sexual intercourse with his wife who is already a mother.† The people there

* It may be mentioned that in the *Keora* case, referred to in Mr. Monomohan Ghose's able Note on the Bill, it was maintained that the existing law was sufficient to meet all cases of injury. It is also said, but with what truth is not known, that the Allahabad High Court is also of opinion that the existing law is sufficient to punish all inhuman cases of sexual offence. *All* the papers, pamphlets, petitions, memorials, expressions of opinion, &c. submitted to Government in connexion with the Bill should be sent for by the Home Government and examined before final orders are passed in this matter.

† It may be mentioned that it has been pertinently asked whether when the husband is transported or imprisoned for sexual intercourse with his wife under 12, the son born of such unlawful intercourse will be regarded under the civil law of the land as lawfully born in wedlock or not and whether therefore

fore, can not reconcile themselves to this law and can not but regard it as an arbitrary enactment. Not being Europeans they ought not to be made subject to a law, which may commend itself to the European mind, but the justice and wisdom of which they can not possibly appreciate. The only just and proper way to deal with a matter like this is gradually to educate the people of this country to appreciate European ideas. Barring cases of physical injuries which are rare indeed in this country and which as Dr. Juggobandhu has shown on the authority of European physiologists in his note, (Appendix B.), are far more common in Europe, sexual intercourse with wives between 10 and 12 may at worst be regarded as a vice (a vice of which both husband and wife are in most cases almost equally guilty)—and a vice not at all of such disastrous consequence, as drinking for instance; and a vice like this should certainly not be treated as a heinous crime. It may also be mentioned in this connexion that it has been acutely observed that as the wife would in many cases be equally guilty with the husband, she must in these cases be regarded as an accomplice and her evidence

he will be entitled or not to inherit his father's property. The fact is the framers of the law did not evidently consider the far-reaching effects of the enactment on Hindu and Mahomedan Societies.

alone as has been decided in the notorious *O'Hara* case can not be sufficient to convict the husband so that prosecutions under the Act, even if the wife gave her evidence, are bound to fail for want of corroborative testimony.

25. Your Lordship's Petitioners beg to submit one observation in regard to a suggestion thrown out by the Hon'ble Romesh Chunder Mitter in his note of Dissent, where he says, "It has been said that, according to the true readings of the *Sástras*, the alleged religious difficulty does not really exist. I do not think that the Legislature *as at present constituted* can satisfactorily deal with the question of the *Sástras.* It can be satisfactorily dealt with only by experts. Many experts have submitted their views, but in my opinion the Legislature *as at present constituted* is not competent to say which opinion is correct." (Liberty has been taken to Italicise the words *as at present constituted*). With reference to this passage of Sir Romesh Chunder's note, Sir Andrew Scoble said, "I am disposed to agree with my honourable friend that no legislative body (*whether constituted as at present or in any other way*) [the parenthetical clause has been Italicised] can satisfactorily deal with the question of the *Sástras*, in the way of giving an authoritative opinion on them."

This seems to require one word of comment. What Sir Romesh Chunder meant was that if the Legislature were constituted on the basis of representation of the people by the introduction of some sort of Elective System, the Council, would then be competent to decide on a *Sástric* controversy like the present; but not otherwise. To this implied reference to an Elective Council the rejoinder was that even if the Council were elective it would not be competent to decide a question of this nature. For the Proclamation would be equally binding whether the Council were elective or not. If this be the real meaning of the rejoinder it must be said that it is clearly a misconception. If the Parliament and the Queen-Empress graciously gave the people the privilege of making their own laws by their representatives in Council elected by themselves, the Act conferring the privilege, would, in certain respects, be a Charter to the people of India of far superior import to that of the gracious Royal Proclamation. If the people were Graciously allowed to make their own laws, they could of course, if they chose, interfere with any of their own religious beliefs. Constituted as the Legislature at present is, the Proclamation is an invaluable safeguard. With a Representative Council, the safeguard would not be needed and would therefore lose its importance. If therefore the

Government is desirous of seeing in India reforms in Social matters, which are more or less connected with religion, it should do all it can to obtain for the people some sort of Representative Legislature. Reforms would then take a normal course; as the people advanced in education and gradually saw the value of certain reforms, their representatives in Council would advocate such reforms and when the representatives of a particular section of the people were for a particular reform, the reform might at once be carried out by a Legislative enactment. For an alien Government to introduce social reforms by legislative measures regardless of the wishes of the majority of the people themselves, is neither wise, nor just, nor humane.

26. Your Lordship's Petitioners beg now to return to the question of the reservations with which, no less an authority than the Representative of the Queen-Empress says, Her gracious Proclamation is to be taken. Numerous instances have been given to show that the British Government has always interfered with the Hindu religion in the interests of morality, humanity and civilisation. Of these instances the abolition of the *suttee* was really a religious practice; infanticide and the rest of them were not religious practices in any true sense of the word. In the case of the *suttee*, again, Government did not compel people

to violate any positive injunction of their religion. A widow according to the *Sástras* could either follow a life of ascetic virtue or immolate herself. Government abolished only one alternative course; the other course, which again is the better course according to the *Sástras* themselves, was still open to her. This point was fully gone into in the Báli-Uttarpárá Memorial appended hereto (Appendix C. p. 26).*

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* The following extract from letter No. 1112 dated 26th March 1885 from the Government of Bombay then headed by the Right Hon'ble Sir James Fergusson to the Government of India, Home Department, may be given to show the difference between the abolition of *Suttee* and interference with customs affecting the domestic life of the people. The extract also shows that in 1885 the Government of Bombay thought that such interference could not do any good. It may be mentioned that the Government of India under Lord Dufferin, one of the greatest statesmen India ever had for her Viceroy, accepted this opinion and acted upon it. Lord Dufferin said :—"But legislation, though it may be didactive in its effect, should not be undertaken for merely didactive purposes; and in the competition of influence between legislation on the one hand, and caste or custom on the other, the condition of success on the part of the former is that the Legislature should keep within its natural boundaries, and should not, by overstepping those boundaries, place itself in direct antagonism to social opinion." The passage occurs in Proceedings of the Government of India dated the 8th October, 1886, recorded in connexion with Mr. Malabari's reform proposals.

Be that as it may these interferences with Hindu religion were made before the Gracious Proclamation of 1858 and they can not be cited in support of an interference with Hindu religion at the present day. The only case after the Proclamation that is cited is the prohibition of swinging at the *Charak* festival; but every one knows that it was not a religious ceremony at all and no serious objection was made to the measure.

Your Lordship's Petitioners would consider it a great misfortune if the views expressed in

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It is simply deplorable that in the space of 5 years the policy of the Government of India should have undergone an entire change.

The extract from the letter of the Bombay Government referred to above is as follows:—

"There is no analogy between *Sati* or infanticide and the customs in question. Murder and suicide are offences against the criminal law of India as against that of all civilized countries and the adoption of special measures for the repression of particular forms of murder and suicide, is very different from interference with customs against which all that can be said is that they have a generally evil effect. When the customs have a religious sanction, they are apt to be strengthened instead of repressed by State interference, which is regarded as persecution and begets religious enthusiasm. Superstitions and unnatural social traditions can never be abolished by being directly attacked: they become obsolete and perish when civilization has outgrown them."

Council in regard to the reservations with which, it was said, the Proclamation was to be taken, were to be sanctioned by Your Lordship. They had thought that the Proclamation was an absolute charter for religious liberty and toleration which could not be explained away on any account. They had thought that as by the time the Proclamation was issued, British Government in this country had lasted long enough to weed out all customs that were justly repugnant to the conscience of the British people, and that as interference in a slight matter of religion had plunged the country in the horrors of the Mutiny, which cost untold sufferings to the rulers as to the ruled, Her Majesty the Queen-Empress had graciously been pleased to grant them a charter by which their religion was made perfectly safe from any further interference. The way in which both the Law Member and the Viceroy spoke of the great charter, would lead one to think that they took it for a mere rhetorical effusion, without precision of language and that to find out its real meaning it would not do to take the words in which it is couched in their ordinary sense, but that recourse must be had to the precise language of the Indian Council Act of 1861, which tones down the sentiment and rhetoric of the document. It is needless to say that if the

people had taken it in that sense it could not arouse in their breast a glow of devoted loyalty to the throne from which it emanated, nor could it have descended like the soft dew of heaven, upon a parched land and brought restoring balm, like Cordelia's sacred kiss, to a distracted country in which ruin and havoc reigned supreme and the dogs of Civil war had been let loose.

27. Your Lordship's Petitioners beg humbly to submit that if, as was roundly asserted by the Law-Member and the Viceroy, Indian religions must give way whenever they are in conflict with English notions of humanity, morality and civilisation a good deal, if not the whole, of the fabric of many of the Indian religions, might be pulled down any day. As illustrations, Your Lordship's Petitioners beg leave to mention that the following might all be abolished on one or other of the above grounds.

(1) The system of early marriage, which, indeed, a responsible Member of Council declared, the Government was competent to abolish.

(2) Polygamy by which is meant not only the unrestrained polygamy sometimes practised in India and which is condemned by the *Sástras*, (*vide* Appendix C. p. 26.) but also polygamy

which is enjoined in the *Sástras* as for instance when one's wife is either barren or gives birth to daughters only.

(3) Animal Sacrifices at Hindu and Mahomedan religious festivals.

(4) The Musulman rite of circumcision and the Hindu ceremony of piercing the ear on the occasion of the sacred-thread ceremony.

(5) The compulsory fast of widows on certain days of the moon and the ascetic austerity to which according to *Sástric* rules they are subjected including the cutting off of the hair.

(6) The custom of taking dying people to the side of the sacred rivers or at least from off their beds immediately before death.

(7) The practice of *Gandi* that is of a man's going to some sacred shrine in observance of a vow, measuring his length on the ground, rising up and falling down and again measuring his length on the ground and so on, all the way, till he reaches his destination, which may be miles and miles away from the place from which he started.

(8) The practice of *Hatyá*, that is, of a man's lying down before a shrine and fasting for days and days, till he obtained from the

presiding deity some intimation in dreams or otherwise that the object of his penance would be gained.

(9) Giving of alms indiscriminately to the poor who beg from door to door (indiscriminate charity being considered immoral by a large section of the English people).

(10) The Hindu caste system together with the system of punishment, by excommunication and otherwise, for violation of caste-rules, and ecclesiastical laws.

(11) Idolatry itself, being opposed to the first of the ten commandments. Christian missionaries are heard to say that the sight of the Hindu idols fills them with horror as embodied blasphemy of the worst kind, likening the Maker of the universe to ill-favoured images. Again, certain forms of worship in which the reproductive principle of Nature is adored as in the *lingum* of Siva or of the principle of Love in the adventures of Rádhá and Krishna might according to the Christian standard be not only characterised as immoral but positively obscene.

28. Your Lordship's Petitioners may here venture to remark that with the reservations spoken of by the Viceroy, the Proclamation can

only mean that the British Government would not either *wantonly* interfere with the religious beliefs and worships of the Indian people or would not interfere for the purpose of directly proselytizing them. A solemn Proclamation was hardly needed if this was all that was meant. With what pain Your Lordship's Petitioners regard this attempt to take away all significance from the Gracious Proclamation they can hardly trust themselves to express.

29. Your Lordship's Petitioners might give what they considered satisfactory reasons why the interpretation sought to be given to the Proclamation was not tenable, but it is hardly necessary. Through Your Lordship they appeal to the Fountain head itself of the Proclamation and if their Queen-Empress should, to their heavy misfortune uphold the views of Her Representative, they would humbly bow to that august decision, in deep sorrow no doubt, but also with deep resignation. They can not, under any circumstances, think of questioning the wisdom of their Sovereign.

30. Your Lordship's Petitioners beg now to turn to the only other question that remains to be dealt with. "Was it necessary in the interests of humanity, morality and civilization to dis-

regard the Proclamation in this particular matter and interfere with the Hindu religion? or could not the object aimed at, be gained without doing violence to the Proclamation and the Hindu religion?"

Your Lordship's Petitioners consider this question to be the most important of all, and solicit Your Lordship's kind attention to their arguments on this point. Reasons have been given why this measure need not at all have been taken up; but let it be ungrudgingly admitted to the Government that some such measure was absolutely necessary to enable the Government to do its duty by the poor child-wives of this country, by giving them protection against the brutal instincts of their husbands. But admitting all this, Your Lordship's Petitioners submit that if an amendment, which in their estimation would have been an improvement on the measure, and which had been pressed upon the Government with all earnestness not only by Your Lordship's Petitioners, but by many of the noblest sons of Indian, had been adopted, no violence would have been done to their religion and the object of the Government would have been gained. Surely in a matter like this, too much care could not be taken not to give a shock to the religious susceptibilities of a people highly sensitive in the matter of their religion, when it was unavoidable to rudely

shock them in the matter of their domestic life, in which also they are equally or perhaps even more keenly sensitive. The amendment suggested was the substitution of the *age of puberty*, as indicated by the first appearance of the catamenia, for the hard and fast age limit of 12 years. This would have been an improvement on the Bill in this way, that while about 35 per cent. of the girls attain puberty *before* 12, the remaining 65 per cent. attain it *after* that age, so that the period of protection would by the adoption of the amendment have been extended in the great majority of cases and a limit fixed by Nature herself would have been adopted instead of an arbitrary age limit. It is perfectly well-known that one girl may be relatively more mature at 11 years and 6 months than another at 12 years or even 13 or 14 for the matter of that. Development depends more upon individual constitution than upon age of a certain number of years. A weakly undeveloped girl of 13 may require greater protection than a healthy well-developed girl of even 11. The advantages therefore of the substitution of the age of puberty for 12 years are so evident, in as much as (1) it would have completely removed the religious difficulty and (2) would have given protection to nearly double the number of girls and (3) would have given protection to the more weakly and undeveloped,

that is, to those who more urgently needed protection, that the reasons why the proposed amendment was rejected can not but be closely examined to see if they really out-weigh the advantages on the other side. On a careful examination of these, however, it would unquestionably appear to every candid mind that the disadvantages of the substitution of puberty for 12 years are almost as nothing compared with the advantages.

The reasons why the Legislative Council could not see their way to adopt the amendment are given principally by the Hon'ble Sir Andrew Scoble, by the Hon'ble Mr. Evans, by the Hon'ble Mr. Hutchins and by His Excellency the Viceroy himself. Sir Andrew Scoble says "No doubt there will be difficulty in many cases in procuring satisfactory evidence of age, but the temptation to manufacture evidence in regard to the physical condition of the girl would be infinitely greater. As His Highness the Mahárájah of Jaipur has aptly pointed out—'though such a provision would serve to silence the clamour raised against the Bill, yet there would be this danger that delinquents in their endeavours to defend themselves would almost in every instance, try to take shelter under the exception contemplated.' The majority of the Select Committee entirely agree with His Honour the Lieutenant-Governor in thinking that, apart

from technical difficulties, the objections to making it necessary to prove in Court the occurrence of the first indications of puberty are insuperable. We have the authority of the Bengal Government for holding that the signs of puberty are frequently brought on. How then is it possible to accept this test in preference to that of age?"

The Hon'ble Mr. Evans says on this point:—

"If instead of an age limit we substitute maturity as the limit of protection what are the results? Intercourse with an infant is then lawful on maturity, however young the girl."

The Hon'ble Mr. Hutchins says, "To a certain extent I sympathise with this view [*viz.* that puberty should be adopted as the criterion rather than a limit of age]. Real and natural puberty would undoubtedly be a far better physiological test than any hard-and-fast age. There are however insuperable objections to the magistracy investigating the delicate questions of this description, and I am sure no one would press these objections more strongly than those who oppose the present Bill. The condition, too, is one which is easily simulated, and which can be, *and is, accelerated by the very evil* which we are seeking to stop or by other unnatural practices. I do not forget that among Hindus the attainment

of puberty is attended with certain ceremonies and becomes a matter almost of public notoriety, but even this does not obviate the objections which I have just stated. Besides, it must be remembered that we are not legislating for Hindus alone : the Penal Code has universal application.

"It has been said that the exact age of a girl is rarely known, and there is doubtless some truth in this objection. But it is one which will gradually disappear as education spreads, and the necessity for maintaining some proof of age becomes impressed on the people at large. This difficulty has not deterred the Legislature from laying down limits of age in regard to other matters even in the criminal law and in practice courts manage to arrive at fairly sound conclusions about age."

His Excellency the Viceroy says, "I may observe in passing that it was *mainly* in deference to the apprehensions of which I have spoken [the apprehension of inquisitorial action by the police, of prosecutions instituted from vindictive motives and of criminal investigations into family matters of the most domestic and private character]—that we have found ourselves unable to accept the well-intentioned proposal that we should insert in the Bill, as an alternative for the limit of age

which we have adopted, the attainment of puberty by the girl. This proposal, which seemed to us open to objection upon other grounds, was certainly open to criticism for the reason that its adoption might have led to invesigations more inquisitorial and far more repugnant to family sentiment, than any which are likely to take place under the Bill as it stands."

These are all the objections that have been made to the puberty test, and a careful examination of them will show that there is nothing formidable in them. It is not the fact that puberty is harder to prove than age. On this point the strong testimony of Mr. R. D. Lyall, Commissioner of the Chittagong Division whose testimony has been relied upon by the Law Member to establish the existence of the evil. This distinguished officer has said "I do not think the age of Consent can be raised without really interfering with the Hindu Religion. Some girls do menstruate at ten or thereabout, and to make it an offence for a husband to cohabit with such would be flying straight in the face of the dictates of the Hindu faith... ... ... I think the publicity which the *second marriage* ceremony gives to the time of the girl attaining puberty should be made use of in any legislation if it is decided to legislate."

The fear of indelicate details in regard to the at-

tainment of puberty having to be investigated into by the magistracy need not terrify anybody who remembers that this investigation will form part of the proceedings of a rape case. He who is so terrified seems to be much in the position of one who strains at a gnat when he has safely swallowed the camel.

With regard to the objection that puberty is often simulated and brought on artificially, Your Lordship's Petitioners beg to state that they are not aware of the existence of such foul practices, and that if they exist at all, they think, they must exist only among those who are in training to swell "the great shame of great cities" (and as regards the application of the law to the case of that class of persons or to the case of strangers as distinguished from those related as husband and wife, Your Lordship's Petitioners have not the slightest objection to the Act). But if it is meant to assert that these foul practices are to be found among the nation at large, it would be to grossly libel the nation,—such libels being prompted perhaps by those pseudo-reformers who in. their desire to reform Hindu Society have, as a first step thereto, cut off all connexion with that society and, who outcasts themselves, are now anxious to destroy that ancient social fabric. The refusal to adopt the puberty

test which has so many advantages to recommend it, and in regard to which Sir Andrew Scoble's authority the Maharaja of Jaipur has himself said that it would serve to silence the agitation (His Highness uses the word 'clamour') raised against the Bill,—an agitation which is not for the good either of the ruled or the rulers and which is regarded by many wise men as ominous and so fills them with a feeling of uneasiness and alarm,—is only another instance of the unsympathetic way in which the people have unfortunately been treated throughout this painful business. No one denies that age can be approximately ascertained by Courts of Justice and that even in the criminal law of the land there are many matters in which limits of age have had to be laid down. But the difference between the present and all such matters is just this, that under this law, all the girls of the country from the daughter of the prince to that of the peasant, may have to appear in a Criminal Court, seeing that early marriage is the system of the land and in every case every husband may be suspected of having broken the law by violating his child-wife under 12. In other cases of crime, the known characters of men, and their position in society, make it impossible for any suspicion resting upon them. It is only the criminal who, as a general rule, need have any thing to fear from

the ordinary criminal law of the land; but this new crime is of a peculiar nature, and hence the danger of fixing an age limit which is not easy of proof in this country where the Registration of Births is unknown. The Hon'ble Mr. Hutchins admits that there is some truth in the objection that the exact age of a girl is rarely known. But he relies upon the gradual spread of education to remove the difficulty. Would it not be better, then, for the present, when education is sadly backward, and the vast mases of the people have not a scrap of paper in their possession, to fix the puberty test instead of the age test?

There is one thing to be borne in mind in this connexion. All the Members of Council almost unanimously think that there will not be many prosecutions under the new law and that it is not desirable that there should be many. They rely chiefly upon the educative action of the Bill. That being the case, would it not be better to make this concession, which the people are so earnestly, almost so plaintively, praying for? What matters it if a case here and there breaks down because of puberty having been simulated or artificially brought about, when the mere presenee of the law in the Statute Book is expected to do so much good? It must also be remembered that cases would also break down for manufactured evidence

as to the age of the girls. When the guardians of the girls will have a direct interest in making out that the girl has passed 12, they will generally be able to prove the fact; no medical examination can fix the age of a girl with that precision in regard not only to the number of years, but of years months and days which would be necessary to bring home the charge to the accused. Whereas the attainment of puberty is usually a matter of notoriety in Hindu families and independent testimony positive and negative may be available to prove or disprove the fact. It is true that this notoriety takes place only in the case of Hindus. But it is the Hindus who chiefly object to the Bill on a strong religious ground. Sir Andrew Scoble has said "I can quite understand that there may be men who place religious duty above all earthly laws but these men are few." But are not these men, though few, the very salt, if not of the earth, being only Hindus, at least of their own fatherland? And is it not worth while, if possible, to see that these men have no cause to shed tears of anguish, as they are actually doing, at the passing of the Bill? And therefore though the Penal Code is not for the Hindus only but has universal application, may not a provision be made in it with the view of meeting the religious objections of men like these belonging to that community?

Instances of such special legislation, even in the criminal law of the land, are not far to seek.

In several sections of the Indian Penal Code, the difference of religion and of social customs based upon religion, are implied and the naming of the particular religion meant is only avoided by skilful use of general language. As an instance the exception to section 292 (which section deals with obscene books, painting &c.) may be given. The exception runs thus:—

"This section does not extend to any representation, sculptured, engraved, painted or otherwise represented, on or in any temple, or any car used for the conveyance of idols, or used for any religious purpose."

Here the Hindu or Jaina car festival is distinctly implied, though the word Hindu or Jaina is not used. It would certainly not be difficult so to word the exception to the present Act (on the ground of the attainment of puberty before 12, in the case of Hindu girls) as to avoid the use of the word Hindu.

It may also be pointed out that this exception to section 292, is itself an instance of an act, ordinarily criminal, not being regarded a crime on the ground of religion.

The crime of bigamy (sec. 494. Indian Penal

Code) is another instance in point. Bigamy is allowed by the Hindu and Mahomedan religions. But in the section in question, by the use of general language it has been possible to make an exception in favour of Hindus and Mahomedans committing bigamy without naming them directly. "Whoever, having a husband or wife living, marries *in any case in which such marriage is void by reason of its taking place during the life of such husband or wife*, shall be punished &c., &c." By the use of the words that have been Italicised, the necessity of directly laying down an exception in the case of Hindus and Mahomedans has been avoided.

As an instance of special criminal legislation, may be mentioned the whole of Chapter XXXIII, of the Criminal Proceedure Code, which like the Penal Code, is not for a particular section of the people of India but "has universal application." The heading of the chapter, "Criminal Proceedings against Europeans and Americans," is enough to show its application to only a special class.

The remark of the Hon'ble Mr. Hutchins that the puberty test can not be adopted as that physical condition is one which can be and is accelerated by the evil which Government is seeking to stop, can not be taken as of much weight. The acceleration can

take place, if at all, in only a very small number of cases and the acceleration by the evil practice sought to be stopped by the Bill need not, if the Bill is operative, be feared; for in that case the husband guilty of the evil practice will have been transported before the attainment of his wife's puberty or at least the educative action of the Bill will have prevented him from being guilty of the evil practice. If the Act can check the evil practice at all, it can also check the acceleration of puberty by the self-same evil practice.

To the remark of the Hon'ble Mr. Evans that if maturity were substituted for an age limit the result would only be that intercourse with an infant would then be lawful on maturity however young the girl, the obvious reply can be made that maturity is a better indication of the fitness of a girl for sexual intercourse than an age limit of 12; but the Hindus, who earnestly pray for the adoption of this test, in order that their religion might be saved from violence, would be content if the alternative limit of puberty were made available only *after* the age of 10, which was the limit fixed in the Penal Code before its amendment by the present measure, so that the objection of Mr. Evans would not at all apply. The proviso might stand as follows: (It is, of course, needless to say that it would, if adopted, have to be

put in accurate legal phraseology).

Provided that a sexual intercourse by a husband with his wife, *who is above ten years of age* and under 12, shall not be rape if the wife shall have attained puberty as evidenced by the first appearance of menstruation, and if according to his religious belief the husband is bound to have sexual intercourse with his wife on her attainment of puberty.

It has already been mentioned that the Hindu would have no strong objection to retain the age limit of 10 under all circumstances, not only because it has been the law of the land, for a long time but also because it is almost certain that his *Sástras* do not enjoin but on the contrary forbid sexual intercourse with a wife of 10 or under, though she may have menstruated. (*Vide* Appendix C. p. 55.)

Your Lordship's Petitioners beg now to offer some observations on His Excellency the Viceroy's objection to the adoption of the puberty test. His Excellency's objection is *mainly* based (the word *mainly* is His Excellency's) on the apprehension that the adoption of this test might lead to investigations far more inquisitorial and far more repugnant to family sentiment, than are likely to take place under the age test of the Act. To

this Your Lordship's Petitioners beg to reply,

(1) That they have no grounds to fear *more* inquisitorial investigations and so forth under the puberty-test than under the Act as passed.

(2) That even if they had greater danger to fear (and for argument's sake they beg to admit the existence of the greater danger), they would willingly submit to it so that their religion might be saved from violence.

(3) That such Hindus, as had any objections, need not claim the privilege of the exception provided for Hindus, so that the *proviso* may for them be, as if, non-existent. They would claim to be tried under the age-limit and not under the *proviso*, so that the apprehensions pointed out by His Excellency seem to be illusory. Had it been necessary to abolish the age-limit altogether, there might have been some foundation for His Excellency's apprehensions. But the age-limit need not be abolished altogether. It may stand as at present, a *proviso* being only added in favour of those who have intercourse with their wives after they attain puberty. The exception might be made to apply only to Hindus and in the case of wives above 10 only. His Excellency's

words themselves, "the well-intentioned proposal that we should insert in the Bill, as an alternative for the limit of age which we have adopted, the attainment of puberty by the girl," clearly show that the age limit might be retained and the attainment of puberty inserted as only an alternative. It may here be mentioned that the Hon'ble Sir Romesh Chunder Mitter proposed that, in consideration of the insertion of the alternative puberty-limit, the age-limit might be raised from 12 to 13, thus extending the protection sought to be given by the measure to a much larger percentage of girls; and the Hindu community would have been only too glad if they could obtain the concession they prayed for, by the raising of the age-limit. Any candid person examining the Act as it has been passed and the proposal made by the Hon'ble Romesh Chunder Mitter, cannot but be convinced that the adoption of that proposal would have been a great improvement on the Government measure, even from the reformers' point of view.

If there were two alternative tests, the age-test and the puberty-test in the Act, people would elect to be tried either on the one test or on the other just as it would suit them. If they had clear proof

of age and not of puberty (or if they did not like to give proof of puberty on account of the investigations being revolting to them) they would plead that the wife was above 12. If however they were orthodox Hindus who, in order to perform a religious duty when their wives attained puberty before 12, would claim the privilege of the exception, they would willingly submit to the necessary investigations being made, as otherwise they could not save their religious scruples. The apprehensions spoken of by His Excellency the Viceroy therefore have no existence in fact for the persons who would claim the privilege of the exception, and as no one could be compelled to claim that privilege against his will, there would be no hardship to anybody.

31. Your Lordship's Petitioners beg to be pardoned for saying that the refusal to adopt the puberty-test when the reasons in favour of its adoption were so strong and the objections to it so weak, has filled the minds of the people with alarm and apprehension. Shrewd men, among the Hindus, who are readers of character, had predicted before the passing of the Bill, when earnest appeals were from all sides made to the Viceroy to adopt the puberty-limit and save the Hindu religion, that the puberty-test would never be adopted. They said that the measure was only the thin end of

the wedge. They pointed out that immediately after the Bill was introduced, the London Times came out with an article in which the following ominous words occurred, "the petitions from some 2,000 Indian women that the age of consent *should be raised to* 14 *at least*, has been powerfully backed up by a memorial addressed to the Viceroy from 55 ladies practicing medicine in India. *If the petition had been complied with*, the shock to Hindu sentinent would have been hardly greater than it has been; while the benefit from the change would have been *very much more real*" (liberty has been taken to Italicise some passages of the extract); similar sentiments appeared also in the Anglo-Indian press supporting the Government measure; if the puberty-test were once adopted the law would not lend itself to modification in the direction of increase of age after reasonable intervals to give the people breathing time; for puberty is a natural phenomenon and its time can not be altered at the pleasure of the Legislature; but the age limit of 12 can easily, after a brief respite of a few years, be raised to 14 and the 14 again raised to 16 or 17; the safe-guards demanded by the people would not be given, for then the law would only be operative against the pernicious practice against which it is ostensibly directed; but the Government does not really want

so much to stop the particular practice as to keep the law *in terrorem* over a bewildered people, who would then be compelled to gradually eschew the system of early marriage and then the disorganisation of Hindu Society would proceed apace.

Your Lordship's petitioners have considered it their duty to give expression to the fears entertained. They may be the working of the excited imagination of the people. But it must be said that except calling the people names as mischievous agitators who misrepresent the intentions of Government, not only nothing has been done to allay, but all that could have been done has been done, to confirm their fears. The people think, reasonably enough, that a simple measure would have been passed to check the pernicious practice complained of, if that were the only or even the chief object of the Legislature. They are therefore constrained to see in the measure an indirect attempt to abolish the system of early marriage which is the very corner stone of their society and they feel the danger very keenly. The adoption of some at least of the safeguards mentioned before and this puberty-test in place of the age-test would at once allay the fears of the people and it is certainly the part of a wise Government to allay such fears when it can be done by such simple concessions.

32. In regard to the fitness of the puberty-test Your Lordship's Petitioners humbly refer to the note by Dr. Juggobandhu Bose, which is appended hereto (Appendix B.) Though the opinion of that eminent and experienced medical man in favour of the Indian system which he has supported by that of several European physiologists, may not find general acceptance among Europeans, still it must be remembered that the people of India have managed not only to live but also to thrive in their own way under their system. So far however as the present measure is concerned, any difference of opinion on this point is not of any consequence. As the Hon'ble Sir Romesh Chunder Mitter has remarked in his Note of Dissent (Appendix A.) "It appears to me the proposed measure would not be efficacious in removing the evils pointed out above [*viz.* the evils of "premature maternity"] especially as, in a vast majority of cases, conception takes place after the age of twelve."

Another remark of the Hon'ble Sir Romesh Chunder in this connexion may also be given here:—"Speaking for myself," he observes, "I should say that consummation of marriage before the age of fifteen or sixteen ought to be held reprehensible. But, in the absence of such unmistakable age-criterion of maturity, I think that, between the age of twelve and the occurrence

of the particular physical condition, the latter *is* a better test of fitness for the consummation of marriage than the former."

38. Before concluding Your Lordship's Petitioners think it desirable to correct an impression that seems to exist in some quarters, that the Act is approved of by the women of India inasmuchas they did not join in the agitation against the Bill. This is a great mistake. The women did not join the agitation, as according to the time-honoured traditions of the people, it is not considered consistent with womanly modesty, to take part in public demonstrations or interfere in public matters. They leave such things entirely to their husbands, brothers and fathers. Your Lordship's Petitioners may here as well make the statement that when the idea was broached that petitions signed by Indian women should be submitted to Government protesting against the measure, it was at once scouted as being contrary to the sentiments and traditions of the people. In India women are independent in the sphere of home and there they have almost every thing their own way; but in other matters they can not take, and do not wish to take, any independent action. This is the secret why the women of the country have not openly joined in the agitation, though they have none

the less been the inspirers of it; for it is the lively sense of the alarm they felt at the prospect of the passing of the measure, that made the men do what they could to arrest the calamity. It may also be mentioned that where the scruples for women joining in a public demonstration could not be felt, as for instance in that truly touching demonstration when more than two hundred thousand Hindus flocked from all parts to offer prayers to their great goddess, Káli at Kálighát (South Calcutta), men and women in almost equal numbers were seen in that great assembly, praying earnestly that the measure which threatened the honour of Hindu women and dealt a severe blow to the Hindu religion might not pass. Your Lordship's Petitioners beg leave to add that in Hindu households, pious women had vowed to make offerings to their gods if the danger were averted. From the nature of the case it is only the women of the advanced people, that it to say people of Europeanised notions in social matters, who could speak out in the matter, the great bulk of the women had to remain dumb as it would have been a departure from the traditions of the country for them to have made their sentiments known.

34. Your Lordship's Petitioners beg to give here the following extract from the petition submitted to the Viceroy from Báli-Uttarpárá

(Appendix D) before the passing of the measure. It is the concluding appeal with which that petition ends (Appendix D. pp. 6—8):—

"Your Excellency's Petitioners ask leave to approach Your Excellency, only with this humble prayer that Your Excellency will graciously refrain from doing violence to the religious beliefs of your Petitioners. Falling at your feet, in the right Hindu style of supplication, with joined palms, they earnestly implore you to be the defender of their religion, which is seriously threatened by the Bill in its present form. Remembering that Your Excellency is the Representative of a Sovereign who pledged solemnly, in the name of God, not to interfere with the religion of her subjects, your Petitioners implore you so to modify the Bill that it may not do violence to the Hindu religion. Your Petitioners can not make Your Excellency see into their heart of hearts, so that you might witness the deep pain and anguish with which they contemplate the passing of this Bill in its present form. Your Excellency will hardly believe it, but it is none the less true, that many of your Petitioners have wept bitterly when the Report of the Select Committee convinced them that they had nothing to hope from the Council. Their only hope now centres in you. You are the responsible head of the administration,

and you cannot divest yourself of an atom of your responsibility, by sharing it with others, in a case like this, for you have the power to *veto* any measure that may even be unanimously passed by the Legislative Council. To Your Excellency, therefore, your Petitioners humbly appeal. Be the Saviour of their Religion, they were never in such extremity before; they never, for a moment, thought that the British Government could be moved to do violence to their religious feelings, after the solemn pledges given them by their revered and beloved Sovereign. They again implore Your Excellency by all that Your Excellency holds sacred, both here and hereafter, not to do violence to their religion. Indeed Your Excellency said, you did not want to do such violence. When the people say that the measure will do violence to their religious beliefs,—and this is a question of fact and not of *Sástras*—Your Excellency will surely graciously desist. Surely, there is no compelling sanctity in the number 12, that it cannot be altered to the age of puberty. This alteration, as has been shown above, would in itself, be an improvement, inasmuchas it would extend the protection sought to be given to poor girls to an age beyond 12 years in the majority of cases; it would have the effect of bringing the law of the land in harmony with the moral law of the people

laid down in their sacred scriptures, so that pious Hindus might be made to see that the Government really wanted to restore the authority which the *Sástras* had happened unfortunately to lose with some people in the land; it would restore confidence to a despairing people keenly sensitive in the matter of their religion, who, if the Bill became law, in its present form, could not fail to think that the Proclamation of their Sovereign, which they had hitherto considered as the Charter of their religious liberty, had been virtually annulled; and lastly it would pour oil over the troubled waters of a controversy between the whole orthodox community on the one hand, and a handful of reformers on the other,—a controversy which can have only one effect, namely, that of producing a reaction that would retard genuine reform for long years to come; for, after all, true reform must come from within; if Acts of the Legislature could make men moral and virtuous, sin and wrong would long ere this have been abolished from the face of the earth.

"Grant then this humble, this earnest prayer of Your Excellency's Petitioners to save their religion; and may God Almighty, the God of Christians, as well as of Hindus, bless Your Excellency with long-life and shower His choicest blessings on you and yours. It is not nothing, the bene-

diction of a whole people, even though only a subject people, when delivered from a great danger and a dire calamity. Be Your Excellency that honoured Deliverer, and Your Excellency's name will be cherished in the heart of hearts of a grateful people as never was any name cherished there before."

35. This appeal of Your Lordship's Petitioners, like the appeal of the whole country, proved unavailing. The India Government stood relentless as fate. They now venture to approach Your Lordship and prefer the same prayer. May, Your Lordship be the Saviour of their religion and may God Almighty bless Your Lordship with prosperity and happiness. The gratitude of a whole nation will follow Your Lordship through life and eternity, like the remembrance of a noble deed, and the prayers of a devout people will be offered morning, noon and evening to the Eternal Throne above for the Deliverer who saved their religion, the most precious possession on earth of a poor subject people.

And Your Lordship's Petitioners as in duty bound shall ever pray.

Sd. PEARY MOHUN MUKERJI,
,, KEDAR NATH CHATTERJEE,
,, AUBINASH CHUNDER BANERJEE,
,, HARADHAN CHATTERJEE,
,, JOGINDRA NATH CHATTERJEE
AND OVER 2000 OTHERS.

The 20th April 1891.

APPENDIX A.

CONTAINING

A NOTE OF DISSENT

BY

THE HON'BLE SIR ROMESH CHUNDER MITTER

AS ALSO HIS SPEECH

On the occasion of the introduction of the

"Age of Consent Bill"

INTO THE

INDIAN LEGISLATIVE COUNCIL.

The Hon'ble Sir Romesh Chunder Mitter's Note of Dissent.

Since its introduction into the Council, this Bill has been subjected to an exhaustive criticism and to a searching examination by the public as regards its principle and details from almost every point of view. After bestowing careful consideration upon all that has been said for and against it, I am still [*] of opinion that the proposed amendment of the *exception* to section 375, Indian Penal Code, is likely to cause more harm than good.

I think it is indisputable that any measure which has the slightest tendency to disturb the harmony of the marriage relation ought not to be adopted by the Legislature until its *utility* has been established beyond all reasonable doubt. I threfore propose to consider first the question of utility, or, in other words, whether the proposed amendment is likely to produce any practical good results.

In dealing with this question I shall assume at the outset that the vice of premature intercourse by husbands with girl-wives exists to a culpable extent in Bengal. This assumption, so far as my

[* The speech of the Hon'ble Sir Romesh Chunder Mitter at the time of the introduction of the "Consent Bill" into the Legislative Council is given below for convenience of reference.]

knowledge of Hindu society in Bengal goes, is not fairly tenable.

Assuming that this evil exists, is it likely that the proposed law will remedy it to any appreciable degree? In answering this question it must be remembered that this vice (if it exists) has grown up notwithstanding that the Hindu *Shástras* denounce it in strong terms as sinful. If, notwithstanding the interdiction of the *Shástras*, the evil exists, it must be due to a vicious practice which the influence of the *Shástras* has not been able to control. That being so, it is not probable that the proposed law will have the effect of checking this pernicious practice, as, in my opinion, the law will remain a dead-letter. In cases where fatal injuries are caused to girl-wives, it would not be necessary to invoke the aid of the proposed law, as in these cases the provisions of the existing law are sufficient to visit the brutal offender with condign punishment.

In other cases it must be a dead-letter, because the offence when committed could be established by the evidence of the unfortunate wife only, and she would rather suffer silently than come forward to denounce her husband in open Court, however brutal his conduct might appear even to herself. The position

of the wife in a case of this nature would be most unfortunate, because, besides suffering from the brutal conduct of her husband, she would have to give her testimony in open Court regarding facts which she would not willingly disclose even to her own mother. Then, again, if she spoke the truth, her position would be worse than that of a widow. On the other hand, if she deposed falsely, there would be the terror of punishment for perjury before her. A position like this is certainly most unfortunate. Were it possible for us to ascertain the wishes of the very persons for whose benefit the Bill is introduced, I feel sure that they would be the first to demand its withdrawal if they could only realise the lamentable position in which they would be placed in the event of the law being vigorously worked. The proposed measure is clearly calculated to defeat its own avowed object by depriving the child-wife of the protection of her own lawful protector in every instance, without exception, in which the law is to be operative. In fact, the result of the amendment in question would be to punish the victim of the offence more severely than the offender himself.

After the most searching enquiry not a single case resulting in conviction of a husband for rape during the last thirty years has been found out. The exception to section 375, Indian Penal Code,

has been a dead-letter, and its proposed amendment will, I think, be equally a dead-letter.

If, as shown above, the proposed amendment is not likely to have any direct result, then its utility must be established on some other ground.

Upon this point the Hon'ble Member in charge of this Bill, when moving for leave to introduce it, said:—

"The other objection is that legislative action is not likely to have much direct result. This may be so; but for my part I shall be content if the effect of legislation is mainly educative—if it strengthens the hand of fathers of families for the protection of their daughters, and modifies custom so as to diminish the opportunities and incentives which are now afforded for indulgence in this pernicious practice. I can not, moreover, forget that it was pointed out long ago by Dr. Chevers that the existing law has done mischief to those whose interest it was designed to protect, by fixing too low an age: and I agree with the late Lieutenant-Governor of Bengal in the opinion that though it may not be probable or even desirable that many cases will be brought into Court, yet, if the enforcement of the husband's rights upon a girl below tewelve years of age is stigmatised by the law as rape, and it is publicly recognized that those who abet such assaults render themselves liable to punishment, a great improvement will surely be effected not only in the condition of the class for whose protection the Bill is primarily designed, but in the physical and social well-being of the people at large."

Is there any resonable hope for expecting that these results will follow? In considering this question we must remember that the proposed

measure has met with the strongest opposition from the people for whose benefit it is intended. If it be passed into law, it would be forced upon them as a measure of reform. That being so, the inevitable result would be that an unhealthy sympathy would be created in favour of the breakers of the law. When a reform is forced upon an unwilling people, the feeling of opposition which is aroused necessarily blinds them to the benefits of the reform. And the case becomes worse when opinions are arrayed in strength both for or against any particular measure. At all events, the effects of legislation are neutralised when it is opposed to opinion of those on whom it has to be enforced. In these cases constant endeavours are made to evade the law; and especially it would be so in this case, as it would be quite evident to them that it could be evaded with perfect impunity. Recourse to subterfuges, falsehoods and even to forgeries would be had to protect the offender, even from a prosecution.. Far from modifying the practice referred to in the above extract, the new law would induce the bulk of the people to have recourse to all possible devices to make it a dead-letter, as it is considered by them to be an interference with their religion.

In the Penal Code for the last thirty years the limit of the so-called "age of consent" has been

ten years. Has this provision produced any educative effect? Has it ever been appealed to by fathers of families for the protection of their daughters? Or has it deterred people from continuing the pernicious custom of putting child-wives under ten years of age in the same bed with their boy-husbands? As the existing law has been a dead-letter and productive of no results, the proposed amendment, in my opinion, would be equally a dead-letter and productive of very little benefit.

I do not mean to say that in no case the proposed measure would have any beneficial results. In a small number of cases it would, I think, strengthen "the hands of fathers of families" for the protection of their daughters; and also in an infinitesimally small number of cases fathers would be induced not to marry their girls till they attain twelve years of age, notwithstanding the injunction of the comparatively modern Hindu *Sástras* that a father who does not marry his daughters before she attains puberty commits a sin of a very grave character. But persons of this class do not stand in need of educative influence, and in their minds they are already convinced of the reprehensible nature of the practice. But there is a large class of Hindus who sincerely uphold the custom regaring the age of marriage and the time of the *Garbádhána* ceremony as enjoined by the *Sástras*. It

seems to me that the educative effect of the proposed measure will not affect them in the least degree. Comparing, however, the good results with the demoralising effect the latter will be found to outweigh the former.

This objectionable feature of the proposed measure has been so forcibly put by Mr. T. N. Mookerjee in his very able note on this Bill that I cannot do better than extract the following passage from it:—"We must not overlook," he says, "what would be the hard case of thousands of males, chiefly of the low castes. These poor fellows, possessing only one hovel, have to live alone with their child-wives, because under the existing marriage system they have no chance of procuring grown-up girls recognised by law as adults. All in a day the law will not turn them into saints, and it may blight their young lives by seven years' imprisonment with hard labour for one single instance of momentary weakness, under one of the most trying temptations to which flesh is subject. The protection of young girls from cruel treatment is as much a necessity as the protection of young men from temptation of the most trying description. Puritanic reformers, who, viewing the world in the light of their own iron-heartedness, fail to sympathise with the weakness and imperfect

nature of their fellow-beings, may say that these men ought not to marry, ought not to bring to their solitary homes girls under age. Exactly the same view is being insisted upon here, only tempered with mercy and sympathy for the weak nature of human flesh. It should be remembered that the higher the age of consent or consummation is raised by law, the stronger grows the temptation before the husband, the weaker the nature's resistance to the commission of the crime and the greater the impunity. The fear, therefore, may not be unreasonable that a measure simply raising the age of consent or consummation will have the tendency to turn the whole race into a race of *undetected* criminals." Mr. Mukerje's view is that the most appropriate remedy for the evil is by raising the marriageable age by legislation.

In the third paragraph of this note I have *assumed* that the vice of premature intercourse by husbands with girl-wives exists in Bengal to a culpable extent. But really what exists is this. Amongst people of the higher castes girls are generally married between the ages of nine and eleven. Amongst people of the lower castes marriageable age is still lower. The girls go immediately after marriage to their husbands' house and stay there for a week or so. Before they attain puberty they occasionally visit their hus-

bands' house and make a stay for temporary periods. Whenever they visit their husbands' house, the generl practice in Bengal is to allow the young couple to sleep together at night. This is all that comes under the observation of the other members of the family.

It has been stated by a few Indian gentlemen who were consulted by the Government before this Bill was introduced that during this period intercourse takes place. In matters of this kind accurate information is hard to find, and wide generalizations are apt to be formed upon very insufficient data. But it seems to me that if the statements were well founded many cases of bodily injury would have come to light. The unanimous testimony of Indian practising physicians in Calcutta of all standings is to the effect that during their practice not a single case of bodily injury to a *married* girl came to their knowledge. European medical men who practise in Calcutta (as far as I remember) have not been able to refer to any such case which came to their knowledge. I think, therefore, that this statement has been made on insufficient data and is not fairly tenable.

But the practice of allowing the young couple to sleep together before the wife attains puberty is certainly pernicious. Speaking for myself I would extend the restriction to a maturer age. This is a

moral evil which, for the reasons given before, would not, in my opinion, be remedied in any appreciable degree by the proposed measure.

But the greater evil from which the females of the communities in which the custom of early marriage prevails suffer is premature maternity. Among other consequences it throws upon young girls of thirteen and fourteen years of age the burden of maternity when they are physically, mentally and morally quite unfit to take it upon themselves. The result is that it takes them a long time to recover from the shock which their constitution receives by early child-bearing. It is a common instance to find a girl who has scarcely completed her sixteenth year to have become a mother of two or three children. Allowance has to be made for what care is gladly taken by the mother or mother-in-law of the child-mother. Nevertheless, the burden is very injurious to the health of the latter.[*]

On the other hand, 'those who advocate early marriage contend that its advantages far outweigh the evil effects which have been shown in the preceding paragraph. They point to its adaptability to the economic conditions of the people, and in-

[* It may be mentioned that the people of India do not believe in the evils of early maternity set forth by the Hon'ble Sir Romesh Chunder Mitter; and they have competent medical opinion on their side. *Vide* Dr. Juggobundhu's Note (Appendix B)].

sist upon the circumstance that it ensures sexual purity of character.

It would not serve any practical purpose to discuss this question in this note. But it appears to me that the proposed measure would not be efficacious in removing the evils pointed out above, especially as, in a vast majority of cases, conception takes place after the age of twelve.

I shall now proceed to state in what respects, in my opinion, the Bill, if it be passed, ought to be modified. I shall first deal with the modification which, in my opinion, is necessary to meet the religious objection that has been raised.

It has been said that, according to the true readings of the *Sástras*, the alleged religious difficulty does not really exist. I do not think that the Legislature as at present constituted can satisfactorily deal with the question of the *Sástras*. It can be satisfactorily dealt with only by experts. Many experts have submitted their views, but in my opinion the Legislature as at present constituted is not competent to say which opinion is correct.

There can not be any doubt that, according to the current interpretation of the *Sástras* given by the Bengal Pandits, such as Pandit Iswar Chandra Vidyáságar and M. M. Mohesh Chandra Nyáyaratna, the religious objection taken does

really exist. To meet this objection what has been proposed is that the criminal liability of a husband shall cease when a girl attains puberty.

There is no disagreement at all between the injunction of the *Sástras* and the principle upon which the Bill is based. Both forbid the consummation of marriage before puberty. The only difference is that the *Sástras* fix a certain physical condition on the occurrence of which a girl should be deemed to have attained puberty. The Bill in question fixes this time when a girl completes her twelfth year. Quite apart from the religious objection, it seems to me that on purely physiological consideration the view entertained by the *Sástric* authorities is more reasonable. Speaking for myself, I should say that consummation of marriage before the age of fifteen or sixteen ought to be held reprehensible. But, in the absence of such unmistakable age-criterion of maturity, I think that, between the age of twelve and the occurrence of the particular physical condition, the latter is a better test of fitness for the consummation of marriage than the former. Puberty is a certain point in the physical development of a human being. And, if the time for consummation of marriage is to be fixed at an earlier period of life as a concession to popular and *Sástric* opinion on the subject, it would be much better to fix it when

a certain point in physical development is *actually* reached than the hard-and-fast limit of twelve years. A girl of eleven may be more physically developed than a girl of even thirteen. No valid reason appears to me why it shonld be considered that in all cases a girl of twelve is more physically developed than a girl of eleven.

But it seems to me that the view of the *Sástras* is the view which has been substantially adopted in the Bill, though expressed in a way which makes it inconsistent with their injunction in certain cases.

The Hon'ble Member in charge of the Bill, when moving for leave to introduce it, said on this point:—

"The question then remains—What ought that limit to be?

"The proposal of the Bill is to draw the line at twelve years. This is the age which had been advocated by the social reformers who have done so much to educate public opinion on the subject. And there appear to be valid reasons for the recommendation. It is in accordance with the practice which already prevails in some parts of India. In a numerously signed petition from Poona against raising the age of consent, it is stated that consummation of marriage seldom takes place before the girl is twelve years old. In Madras it is alleged that premature cohabitation is of rare occurrence, and in the Punjab conjugal life ordinarily begins after sexual maturity. The Hindu law, as I have already shown, while enjoining the marriage of girls before they attain puberty, strictly prohibits the consummation of marriage before puberty is at-

tained. According to Mahommedan law 'puberty and discretion constitute the essential conditions of the capacity to enter into a valid contract of marriage.' With both the great divisions of the population in India, the attainment of puberty may be taken as determining the appropriate age for consummation of marriage. *When, then, is the period at which, in the ordinary course of nature, puberty is commonly attained by girls in India?* There has been much discussion on this subject among medical men, and many are of opinion that a girl is not conpetent physically or mentally to give her consent to sexual intercourse until she has completed fourteen years of age. But to adopt this limit would be to involve too abrupt a fundamental revolution in the social life of India, and to *attempt to enforce it by legistation would almost certainly fail of its object.* I prefer to submit for the approval of the Council the more moderate view expressed by Dr. Macleod in the paper from which I have already quoted. Speaking of the period of life at which sexual maturity is attained, he says,—

'Hitherto the appearance of menstruation has been held to *indicate this epoch in the life of a female;* and, allowing for the present that it does so in the great majority of cases, what evidence do we possess regarding *the age at which menstruation commences in the females of this country?* Sushruta, the Hindu sage and physician, lays down that the menstrual discharge begins after the twelfth year, and that is the age laid down for marriage by the great Hindu law-giver Manu. Dr. Allen Webb collected statistics on the subject, and the result, as stated in his *Pathologia Indica,* was that "out of a list of 127 Hindu females, menstruation began only in six girls under twelve years of age; and as many of them did not again menstruate until a year after this, which they believed a first appearance, it is probable, as suggested by Babu Madusudan Gupta, that a ruptured hymen would better account for that." *I am not aware of any other*

statistics on this subject, but twelve years may, I think, be accepted as the earliest period of appearance of the menses, and probably thirteen would be a safe average. In England, fourteen years is held to be the most frequent age of menstruation, and it is held by law to be a felony to have sexual intercourse with a girl below that age. Making all due allowance for climatic and racial differences, and bearing social customs in mind, it would seem reasonable and right that the age of protection should be raised in this country from ten to twelve.'

"On the ground, therefore that the age of twelve years approximately may be considered as the average age for consummation of marriage both according to law and custom, on the one hand, and, on the other, as the lowest safe age as regards physical fitness, I venture to think that the line may be drawn at that age without doing violence to any respectable social usage or to the religious law of any portion of the community. And though this age may be considered by some too low, it must be borne in mind that, while this amendment of the law will afford absolute legislative protection to girls up to the age of twelve years, the remedies of the existing law in regard to cases of brutality will remain available to girls above that age."

The whole argument in the above extract amounts to this. For the purposes of this Bill we shall take it that puberty is attained when the oft-referred-to physical condition occurs; and that the age of twelve years approximately may be considered as the average age at which that condition occurs.

This argument evidently proceeds upon the basis that a girl attains puberty when the parti-

cular physical condition occurs in her. That being so, the suggestion that has been made, namely, to draw the line at the higher age of thirteen, making an exception in the case of the occurrence of the particular physical condition at an earlier age, seems to me to be not open to any tenable objection. This would meet the religious difficulty completely. Again, this would have the advantage of postponing the consummation of marriage in a large majority of cases, as will appear from the opinion of medical officers consulted by the Bengal Government.

Brigade Surgeon R. C. Chandra says:—

"But in the majority, so far as I have seen, regular menstruation commences between twelve and thirteen, and sometimes later on."

Surgeon-Major F. C. Nicholson says:—

"I find that out of 68 cases of first menstruation I have collected, 49 occurred at thirteen and over, while only 10 occurred before this age."

Surgeon-Major B. Gupta says:—

"(a) Without discussing the subject at length, I shall state my opinion that the majority of girls in these provinces arrive at puberty between twelve and fourteen years of age, the largest number on the completion of the thirteenth year. In support of this opinion I shall quote some English authorities. Dr. Grailly Hewitt, of London, says in his work on the Diseases of Women: 'The age during which the catamenial discharge occurs

is open to certain variations, but, as a rule, it begins during the age of fourteen and sixteen.' This refers to English women. Again he says: 'The mean age of the commencement of the catamenia appears to be about two years earlier in the warmer than in the more temperate climates. Thus in India the mean age in 597 cases collected by Robertson was thirteen years.' Dr. W. S. Playfair, of London, in his treatise on the Science and Practice of Midwifery, volume I, page 68, says: 'In temperate climate it (catamenia) generally commences between the fourteenth and sixteenth year, the largest number of cases being met within the fifteenth year.' Again, the same authority says: 'There can be no doubt, however, that a larger proportion of girls menstruate early in warm climates. Joulin found that in tropical climates out of 1,365 cases the largest proportion begin to menstruate between the twelfth and thirteenth year, so that there is an average difference of more than two years between the period of its establishment in the tropics and in the temperate countries.' The same authority again states: 'Hains states that among the Hindus 1 to 2 per cent. menstruate as early as nine years of age; 3 to 4 per cent. at ten; 8 per cent. at eleven; and 25 per cent. at twelve.' These figures account for 39 per cent. only; the obvious inference, therefore, is that the remaining 61 per cent. menstruate after twelve years of age."

From these extracts it is clear that the amendment suggested would not only meet the religious difficulty entirely, but at the same time would have the advantage of postponing the consummation of marriage in the majority of cases by one year more.

Then, again, the reason which led the Hon'ble Member in charge of the Bill not to draw the line

at fourteen recommended by the majority of the medical experts consulted, would exactly support the adoption of this amendment. Referring to the age of fourteen he says: "But to adopt this limit would involve too abrupt a fundamental revolution in the social life of India, and to attempt to enforce it by legislation would almost certainly fail of its object." For the same reason the proposed suggestion ought to be adopted.

Then again, the want of knowledge of the precise age of a girl amongst the poorer classes of the community would render it difficult to an honest man to act according to the provisions of the proposed amendment. But with the modification suggested this difficulty would cease to exist.

It has been said that puberty cannot be satisfactorily proved. I think that it admits of more satisfactory proof than age in this country. In a true càse under the proposed law there cannot be conviction unless the wife gives her evidence, and truthfully gives her evidence, against her husband. All the essential facts cannot be proved by any other witness; medical evidence being out of the question, as it will not be available when she refuses to be examined. If, therefore, the wife's evidence be indispensable for a conviction in a

true case, her evidence, which is the best that can be conceived, will be forthcoming to prove or disprove puberty.

In this reasoning I have excluded from my consideration the case of bodily injuries terminating fatally. The existing law seems to me to be sufficient to punish the brutal offender in a case of this nature. Besides the case of Hari Maiti, another case (Kali Churn Keora decided in the year 1877 on a reference from the Sessions Judge of Hoogly), referred to by Mr. Monmohun Ghose and decided by the Hon'ble Louis Jackson and the Hon'ble S. White, J.J., supports this view. In this latter case the learned Judges convicted the husband of having voluntarily caused grievous hurt to his wife. They were of opinion that a full grown adult must be held to have known that by his act he was likely to cause hurt to his immature wife.

Furthermore, the attainment of the age of puberty amongst the Hindus is followed by certain religious rites which will afford the required evidence in a judicial investigation.

The next modification that has been suggested, and which I think is reasonable, is that a premature consummation of marriage should not be treated as rape. It has been already pointed out

that, according to the English law, "the husband cannot be guilty of rape commited by himself upon his lawful wife." Whether this rule of law should be followed in this country was actually considered by Lord Macaulay and his colleagues in 1837 in drafting the Indian Penal Code. They were of opinion that sexual intercourse by a man with his own wife should in no case be considered rape. In 1846 the Law Commissioners, who were not Lord Macaulay's colleagues, introduced the present provision proposing at first the limit at nine years, which limit they afterwards raised to ten years. I find that, after this alteration was suggested by the Law Commissioners in 1846, Mr. J. M. Macleod, one of the colleagues of Lord Macaulay, in a note written by him in 1848 on the Report of the Law Commissiners of the year 1846, observed as follows:—

"Two questions of considerable difficulty are here touched on; they have been brought forward now by observations and suggestions offerred by Mr. J. C. Thomas. They did not escape attention, but, on the contrary, were very carefully considered in preparing the Code. M. Thomas' remarks on them are sensible, but contain nothing which had not been seen and weighed. It was deemed on the whole unadvisable either to extend the fourth description of rape so as to include any

class of cases in which the woman is not married or to narrow the rule that sexual intercourse by a man with his own wife is in no case rape by excepting from it the fifth description of that crime. And that conclusion still appears to me to have been right. I feel the force of the objections to which the proposed law on these points as it stands is liable; but, when I reflect on the social condition of India, they appear to me to be outweighed by evils to which the suggested alterations would afford openings; and I feel satisfied on this, which I confess, weighs a good deal with me, that the law as it has been framed, if it is faulty, errs on the safer side."

This was the view taken by Mr. Macleod, and it further appears that in this view Lord Macaulay agreed. I find this in a preface written by Mr. Macleod to his note. In the last paragraph of this preface, Mr. Macleod, referring to Lord Macaulay, says:—"I have great satisfaction in being authorised by him now to state that he has carefully read the following notes, and that he fully agrees with them."

It is clear, therefore, that Lord Macaulay and his colleagues were of opinion that sexual intercourse by a man with his own wife should in *no case* be rape. I have already pointed out that the existing provision in the Indian Penal Code on

this subject is an anomaly. It is proposed now to emphasize that anomaly by raising the limit of age to twelve years, on the ground that premature sexual intercourse by a man with his own wife prevails in this country to a culpable extent. Having regard to the weight that is justly due to such a high authority as Lord Macaulay, the question whether premature sexual intercourse by a man with his own wife should in any case be considered rape requires careful consideration, notwithstanding the Lagistature eventually adopted the recommendation of the Law Commissioners made in their report of the year 1846. In considering this question it will be convenient to note that the evils arising from premature consummation of marriage may be classed under two heads: "(I) The direct and immediate results which relate to physical injuries culminating sometimes in death. (II) The indirect and remote results which include premature maternity and physical degeneracy as well as the demoralisation of both husband and wife." It seems to me that cases which fall under the first class are crimes, and that the ordinary provisions of the Penal Code relating to hurt, grievous hurt and causing grievous hurt or death by a rash and negligent act are sufficient to punish the offender adequately. (*See* the case of *Hari Maiti* and *Kali Churn Keora*

referred to above.) If, notwithstanding these two decisions, the provisions of the Penal Code are considered not to be sufficient, they may be amended, in order that guilty persons might not escape.

But to group the second class in which no physical injuries result in the same category with rape seems to me to be unreasonable. The moral delinquency involved in a case which falls under this class is not, in my opinion, of such a grave character as to be punishable with the severe punishment provided for rape. I doubt whether this class of moral delinquency should be characterised as a *crime* and not as a *vice*; but, conceding that it may be characterised as a crime, it seems to me to be unreasonable to class it with rape. If it should be made an offence at all, certainly the punishment that should be provided for it should be much lighter that the punishment of rape.

There is a considerable difference between the culpability of a person who outrages his girl-wife and that of a stanger who is guilty of the offence of rape. The proposed Bill does not make this distinction, which, in my opinion, ought to be made. The punishment provided in Section 376 of the Indian Penal Code appears to me very

much out of proportion to the culpability that attaches to the act of a husband who consummates his marriage with his wife who has not attained puberty, where no bodily injury follows. For bodily injuries, I have already said, the provisions of the Penal Code are stringent enough to punish the brutality of the husband.

The last modification I would propose is that the Criminal Procedure Code as regards this offence should be so modified as to allow the commencement of the proceedings against a husband for the offence of premature consummation of marriage not followed by bodily injury, only on the complaint of the wife herself, or of a person who would be her guardian if the marriage did not take place.

It has been said that this provision would make the law completely inoperative. The answer to this argument is that the proposed law cannot but be inoperative, unless the wife gives evidence incriminating the husband, and she, in my opinion, should not be forced against her will to appear as a witness against her husband, the result of which will be to her a life of perpetual widowhood. Then, again, a prosecution followed by an acquittal in a case of this nature will cause great public scandal, and bring disgrace upon the family to

which both the husband and wife belong, for no practical good. Such acquitals will increase very much the unpopularity of the measure. But, if the wife will come forward to complain against her husband, there might be a chance of conviction. Furthermore, a guardian of the minor wife will not move the Court unless she herself openly complains of the ill-treatmet which she has received from her husband. This modification will, therefore, limit the operation of the law in such a way that it will allow only those cases to be brought before the Court in which there will exist some chance of conviction.

ROMESH CHUNDER MITTER.

5*th March*, 1891.

THE HON'BLE SIR ROMESH CHUNDER MITTER'S SPEECH.

(When the Consent Bill was introduced into the Indian Legislative Council on the 9th of January, 1891) :—

The Hon'ble SIR ROMESH CHUNDER MITTER said:—"The proposed amendment of the *exception* to Section 375 of the Indian Penal Code is likely to cause widespread discontent in the country. If it were necessary to protect child-wives from personal violence, or if it were not a departure from the wise and just policy of the Government not to interfere with the religious rites and duties of any portion of the subjects where such interference is not needed for the repression of crimes, or even if it had the effect of remedying to an appreciable degree the evils of early marriage, I should have been very glad to support it.

"So far as the protection of chid-wives from personal violence is concerned, they are now sufficiently protected by the provisions of the existing criminal law.

"A husband under the existing law would be criminally liable for acts which constitute an offence of causing death by doing a rash or negligent act, of hurt simple and grievous or of assault

against his wife, even if they were done with her consent if she be under twelve years of age. The existing law therefore affords sufficient protection to a wife under twelve years of age from violence from her husband.

"The proposed measure would be a departure from the wise and just policy of the Government referred to above, because it would interfere with the religious rites and duties of the orthodox Hindus. I desire to be understood that my observations here apply to the orthodox Hindus domiciled in Bengal Proper. Whether they apply to orthodox Hindus domiciled in other parts of the Empire I cannot say.

"In Bengal Proper the orthodox Hindus are guided by the interpretations of the *Sástras* given in Raghu Nandan Bhattacharya's *Ashtavinsati Tattwas.* Whether these interpretations are correct or not is, I venture to think, a question with which legislators in this country should not concern themselves.

"So long as the orthodox Hindus continue to accept this work as containing a correct exposition of their *Sástras*, we must look to it to ascertain the views of the *Sástras* upon any particular subject. It is for the social and religious reformers to discuss whether or not the book in question interprets the *Sástras* correctly. It is

upon this line that the question of the propriety of abolishing early marriage amongst the Hindus is being discussed now. But, as I have said, we must refer to this work to ascertain whether the proposed measure would or would not interfere with the religious rites and duties of the Hindus in certain cases.

"Raghu Nandan, in *Sanskára Tattwa*, treating of *Garbhádhána* ceremony, lays down that the proper period of the consummation of the marriage is when the wife attains the age at which a certain well-known physical condition occurs, and the husband would commit a sin if he does not then consummate it. Now, in this country this physical condition is reached in certain cases before the age of twelve.

"In these cases the orthodox Hindu husbands, if the proposed amendment be adopted, would be placed in this dilemma—either they must break the law or disregard the injunctions of the *Sástras*. It is true that the hold of the *Sástras* upon the minds of the educated persons, at least so far as the ceremonial portion is concerned, has been to a great extent loosened, and many educated persons amongst the Hindus do dot observe the *Garbhádhána* ceremony in their families. But the proportion of such families to the strictly orthodox families in which it is observed is small. Although the

former do not observe this ceremony in their families, still they disapprove of the present measure, because it is a departure from the non-interference policy hitherto observed by the Government and guaranteed by the great Proclamation of 1858, which says:—

We do strictly charge and enjoin all those who may be in authority under Us, that they abstain from all interference with the religious belief or worship of any of Our subjects on pain of Our highest displeasure.

"Then again, although it is proposed to make the offence when committed by the husband upon his own wife under the amended section non-cognizable, still it would be liable to be abused and be a source of annoyance and molestation in some cases.

"In villages, where party strifes sometimes rage very high, it is not altogether improbable that a judicial officer might be induced to institute criminal proceedings under this section, his suspicion having been aroused by anonymous communications.

"According to the English law as hitherto laid down in decided cases, a husband cannot under any circumstance commit rape upon his own wife, though this proposition has been incidentally doubted in a recent case in which the particular question did not arise. I am not aware whether

in any other civilized country a husband can be held guilty of rape upon his own wife.

"It is an offence which, having regard to the considerations upon which its criminality is founded, a husband should be held incapable of committing. Some of these considerations are obviously the preservation of female chastity and the prevention of indelible disgrace upon the husband and the family to which the outraged female belongs. These considerations cannot apply to a husband.

"It is an anomaly in the Indian Penal Code that a husband under certain circumstances may be guilty of rape upon his own wife. That provision is, however, a dead-letter. Since 1860, when the Penal Code was passed, I am not aware of a single conviction under this part of Section 375. If the amended section is also likely to prove a dead-letter, there is no need for enacting it. If it be, on the other hand, effective in bringing about convictions, even in a small number of cases, the consequences of such convictions upon the marriage relation of the parties would be very deplorable. Could the marriage relation in these cases after the convictions be in any sense happy or cordial? Still the marriages, if they are Hindus, are indissoluble.

"If any amendment of the Code is needed for punishing an offender who is not the husband

of the outraged girl, that may be easily done by substituting twelve for ten in the fifth clause of Section 375. It is open to doubt whether, reading Section 375 with section 90 of the Code, the age of consent as regards persons other than husbands is not already twelve years. But to remove this doubt there cannot be the slightest objection to any amendment which would raise the age of consent in these cases to twelve. But I venture to think that the proposed amendment regarding the husband's criminally would cause wide-spread discontent in the country and would be a departure from the policy to which I have referred in the beginning.

"The degree of discontent that is likely to be caused may be, to a certain extent, realized if we take a parallel case. Suppose in Great Britain an endeavour be made by legislation to enforce the custom of cremation instead of burial, on the ground that the former is far better from a sanitary point of view: what would be the state of the feeling of the people? It seems to me that legislation upon subjects like these must wait till the public opinion is sufficiently educated. In this connection I may be permitted to throw out a doubt that the proposed measure is likely to put back reformation in the marriage system of the Hindus, which was being slowly and silently effected. The or-

thodox and the advanced parties were gradually approaching to a common point of agreement. But the agitation in England has had a very baneful effect upon the prospects of the views of the two parties being reconciled to one another, and the proposed measure, I regret to say, would widen the breach still more.

"These are some of the consequences that I apprehend would follow from the proposed measure. On the other hand, no appreciable benefit would be gained thereby."



APPENDIX B.

NOTE

BY

DR. JUGGOBANDHU BOSE, M. D.

ON THE

"Age of Consent Bill"

Showing that it is uncalled for even on physiological grounds.

Dr. JUGGO BUNDHOO BOSE'S OPINION

ON

The Age of Consent Bill.

CONTENTS.

B. It has not been shown that these troubles are more frequent among young girls than among grown-up women.

C. The opinions of native practitioners are more important than those of their European colleagues.

D. Mortuary Registers.

(ii.) Remote effects of early child-bearing, *e.g.*, uterine troubles, physical degeneration, and constitutional diseases.

A. Many powerful causes at work—

Malaria, climate, heredity, mode of living, insanitary condition of houses, especially of lying-in chambers, improper management of the puerperal state, &c.

B. Opinions quoted to show the evil effects of some of these.

3. The prevention of physical deterioration in the race.

(i.) Middle class men are taken as representing the whole people of Bengal.

(ii.) The causes which produce physical degenerations in the females act equally in the males.

(iii.) Some other causes noticed—

A. Mental work, its effects on the body.

B. Want of physical exercise, the beneficial effects of physical exercise combined with.

C. Good food, we do not get any.

To

THE SECRETARY, BRITISH INDIAN ASSOCIATION,

CALCUTTA.

SIR,

IN reply to your letter asking for a detailed opinion on the medical aspect of the Age of Consent Bill, I beg to send the following notes for your information :—

The first avowed object of this Bill is to protect girl-wives from personal injury, such as Hari Maiti's wife had suffered. It is said that such injuries are extremely common. But there is no evidence to show that they are so. The testimony of the medical men (consulted by the Sobhabazar Standing Committee) goes against the statement that our girl-wives are liable to these injuries. Native midwives have not been able to report a single case of such injury. The medical officers consulted by the Government have not given us any cases; they have spoken vaguely only on theoretical grounds. Dr. Raye tells us that he has no personal knowledge of such cases, but he definitely says that there is great danger in a girl of twelve cohabiting with an adult. But the husbands of such girls are not adults, but adolescents. Where the husbands are adults they abstain from sexual intercourse, otherwise dangerous consequences, as Dr. Raye rightly says, would surely have followed. Dr. R. C. Chandra would infer the frequency as well as the extreme painfulness of marital intercourse with girl-wives from the fact that they weep and sob while going over to their father-in-law's house. What would he say to the mother of several children, of old, who used to weep and sob a good deal more when going to her husband's house.

The positive evidence on this head is derived first from Phulmani's case, from the cases recorded by the lady doctors, and from official statistics of rape cases.

Phulmani's case is not illustrative. Dr. Cobb, who had held the *post mortem* examination over Phulmani's body, said that she must have had intercourse on several previous occasions. Hence nothing short of brutal conduct on the part of her husband could lead to such a fatal result. Her case, therefore, cannot be held as illustrative of the dangers of our girl-wives. For, under the real circumstances of the case, she might have died all the same, even if she had been a grown-up woman.

The lady doctors, 55 in number and practising all over India, have only given us 13 cases. But 4 of these being below 10 years of age are already protected, one is a case of difficult labour and 3 of unnatural offence. So there remain only 5 cases to corroborate the statement about personal injury.

Dr. McLeod gives 48 cases of rape of young girls, and from the fact of these girls receiving bad injuries, he would infer that they would be unfit for marital intercourse. But it is a notorious fact that even grown-up women suffer very badly when they are ravished.

From the actual state of affairs in our society it may be theoretically argued in the absence of positive knowledge that no injury is inflicted on our girl-wives. In the first place girls have generally boys and not fullgrown and able-bodied adults for husbands. Connection, therefore, is not likely to be so painful. In the second place connection is directly harmful in the way of causing injury in proportion as the sexual passion is excited in the male. In the heat of desire one is apt to forget the necessity for caution and gentleness. Strength of desire depends among other things (1) on the age of the male; the older he is, within certain limits the stronger will be the desire; and (2) on the age and development of the female. Sexual desire, apart from what is normally in a particular man, can be stimulated to a very high degree through the sense

and imagination. Anything, therefore, that will excite the latter will stimulate the former. And it is undeniable that a fullgrown woman will, other things being equal, do it in a far greater degree than a girl, say of 12, possibly can. Then again, Hindu husbands living as they do under the very eyes, as it were, of their guardians, cannot in the great majority of cases forget that rashness in the sexual act will lead to exposure in more ways than one. There is every reason for them, therefore, even if their desire be strong, to be cautious and circumspect. There is another element which plays a very important part in this connection. This is diet. Spirituous drinks and animal food are admitted by all to have stimulating effect on the nervous system in general and the sexual appetite in particular. The plain and simple diet of the Hindus is almost wholly devoid of these stimulating properties. In fact the food that they take, so far from producing an excess of reproductive energy, is barely sufficient to meet even the ordinary wants of organic life. But for the reasons just stated, sexual intercourse with a girl-wife might have been disastrous. And we are all the more led to this conclusion by the observation that where the conditions are different intercourse even with adult women is attended with considerable risk. In Europe, at marriage, both man and wife are grown-up. Imagination gets excited to a very high pitch by "sexual ideas and ungratified desires during even an ordinary courtship of two or three months." Then, just after marriage is over, all restraint is thrown off, and the young couple give themselves up to each other in all the ecstacy of love. To enjoy themselves all the more freely they leave their friends and paternal roof during the days of their honeymoon. The result we shall describe in the words of Lawson Tait:

"At a woman's first intercourse the hymen and nymphæ are both usually ruptured, and if the male organ be of disproportionate size, the injury is something very severe. Every gynæcologist

must have listened to the histories given by suffering women of the miseries they underwent during the first six or eight months of their married lives, miseries which are greatly due to the absurd social custom of the honeymoon. The rupture of the nymphæ does not always occur, for the injury may be limited to the fossa naircularis; but I have seen it as a set of radiating fissures all over the vestibule. In these cases the hæmorrhage is sometimes alarming, and as intercourse is repeated at very frequent intervals during the few months of married life, the fissures are not allowed to heal, and they result in painful cracks which ultimately render intercourse so painful as to oblige the woman sometimes to refuse altogether to submit to it, and in nearly all cases she does not derive from it for many months that gratification which is one of its legitimate objects. * * * The injuries sometimes inflicted in the marriage-bed are very serious. Mr. Hammond Smith, of Stourbridge, sent to me some years ago, a young woman with a large recto-vaginal fistula, which was the result of her husband's ignorant violence on the wedding night."—DISEASES OF WOMEN AND ABDOMINAL SURGERY, pp. 50-51.

I can also testify to the evil effects of the custom of the honeymoon. During my long practice, I have been consulted by hundred of Europeans and Eurasians for disorders, which were directly traceable to marital excesses during the period of the honeymoon. I have seen many cases of personal injury, such as has been described by Lawson Tait. And even where no injuries were inflicted, patients were quite exhausted and looked like broken-down debauches with pale faces and sunken eyes. I can honestly affirm that this custom is productive of far greater bodily injuries than our girls ever receive from their boy husbands.

The second object of the proposed legislation is the prevention of permanent injury to the child-wife. The consideration of this involves two very important issues, a proper discussion of which is essential before we can go on with the main subject itself. The one is whether the appearance of a certain event in the female is a sign that she has attained her puberty, and the other is whether the reproductive process interferes with the natural growth of an organism.

With reference to the first I beg to state that Physiologists and Gynæcologists are unanimously of opinion that *the first appearance of menstruation coincides with the establishment of puberty.* I quote the following from some of the most eminent authors :—

(i.) "Shortly after the conclusion of the permanent dentition (the wisdom teeth excepted), the occurrence of puberty marks the beginning of a new phase or life; and the difference between the sexes, hitherto merely potential, now becomes functional. In both sexes the maturation of the generative organs is accompanied by the well-known changes in the body at large; but the events are much more characteristic in the typical female than in the aberrant male. Though in the boy, the breaking of the voice and the rapid growth of the beard which accompany the appearance of active spermatozoa are striking features, yet they are after all superficial. * * * The boy does not become a man till some years after puberty; and the decline of his functional manhood is so gradual that frequently it ceases only when disease puts an end to a ripe old age. With the occurrence of menstruation, on the other hand, at from 13 to 17 years of age, (this is in England) the girl almost at once becomes a woman, and her functional womanhood ceases suddenly at the climacteric in the fifth decennium."—FOSTER'S TEXT-BOOK OF PHYSIOLOGY, 1883, p. 688.

(ii.) "The term puberty is applied to the period at which a human being becomes capable of procreating, which occurs from the 13th to 15th years in the female. In warm climates puberty may occur in girls even at 8 years of age. From the period of puberty, the ripe ova are discharged from the ovary. It seems, however, that ova are discharged even before puberty or menstruation has occurred."—LANDOIS AND STIRLING'S HUMAN PHYSIOLOGY, 1886, p. 1175.

(iii.) "The period of puberty is chiefly characterised by the appearance of semen in the testicles and by the capability of emission and fertile intercourse, and in the female, by the appearance of menstruation and the capacity of being pregnant."—BRINTON'S TRANSLATION OF VALENTINE'S PHYSIOLOGY, p. 668.

(iv.) "The age at which menstruation first appears is usually that at which puberty is attained. This epoch is marked by the entrance of the ovary into active function."—BARNE'S MIDWIFERY, VOL. I, p. 41.

(v.) "Its (menstruation's) first appearance is associated with the other signs of puberty. The approach of this is indicated

by an alteration in the form of the pubis and a consequent change in the figure and gait; by the growth of hair on the pubis, the rapid development of the manimæ, the greater projection of the nipple, and the deeper color of the areola."—LEISHMAN'S MIDWIFERY, 1873, p. 84.

(vi.) "The first appearance of menstruation coincides with the establishment of puberty, and the physical changes that accompany it indicate that the female is capable of conception and child-bearing, although exceptional cases are recorded in which pregnancy occurred before menstruation had begun. * * * The first appearance of menstruation is accompanied by certain well-worked changes in the female system, on the occurrence of which we say that the girl has arrived at the period of puberty. The pubes become covered with hair, the breasts enlarge, the pelirs assumes its fully developed form, and the general contour of the body fills out. * * The menstrual discharge is not established regularly at once. For one or two months there may be only primonitory symptoms—a vague sense of discomfort, pains in the breasts, and a feeling of weight and heat in the back and loins. There may then be a discharge of mucus tinged with blood, or of pure blood, and this may not again show itself for several months. Such irregularities are of little consequence on the first establishment of the function, and need give rise to no apprehension."—PLAYFAIR'S MIDWIFERY, pp. 69-71.

(vii.) "The commencement of the process of menstruation is usually preceded by certain changes in the outward conformation and appearance. The general signs of the arrival of puberty in the woman are thus eloquently described by Brierre de Boismont. (Here he quotes some passages in French.)"—GRAILY HEWITT'S DISEASES OF WOMEN, p. 20.

(viii.) "At a certain period of female life, varying generally from the twelfth year to the seventeenth and known as that of puberty, a sanguineous excretion occurs from the uterus. This flow of blood is the outward and visible sign of the completion of the ovarian function of ovulation or the full development of a Graffian follicle, its rupture and the scape of the ovum."—MACNAUGHTON JONES' DISEASES OF WOMEN.

(ix.) "In the female on the contrary when puberty is reached, the individual passes at a bound as it were from childhood to womanhood, although the structural and functional changes involved in the transition are infinitely more complex and important than is the case in the other. Thus the enlargement of the external genital organs is accompanied with a still greater change of the internal organs of generation—the development of the

uterus, ovaries, and mammae, and the commencement of that periodic sanguineous discharge *per vaginum*, the recurrence of which at regular monthly intervals marks the period within which woman is capable of reproduction."—THOMAS MORE MADDEN OF DUBLIN. QUAIN'S DICTIONARY OF MEDICINE, 1888, PART II, pp. 1271-72.

Lawson Tait, who differs from most authorities in his opinion as to the significance of menstruation, says that it (menstruation) coincides with puberty. According to him the first menstruation marks off the completion of those developmental changes of the female reproductive organs which prepare the woman for child-bearing. He says "in fact the whole process of ovulation goes on before puberty, and the only difference then made is the important addition of carrying the ovum into the uterus and the possibility of its being impregnated." Again, "my conclusions are therefore that the changes in the ovary at puberty are entirely vascular, that in the tube (which conveys the ova from the ovaries to the uterus) they are vascular, mascular, and epithelial; but that the most important change of all is the functional movement of the tube, the absence of which alone makes pregnancy before puberty impossible." In another place he says, "menstruation does not proceed with perfect regularity immediately after its first appearance. It may be suppressed for a few months appearing at the end of the interval, and occurring afterwards in a normal manner."

Undue importance has been attached to the observation that menstruation at its first appearance in this country is sometimes very irregular. It is contended on the strength of this fact alone that the girl has not yet attained puberty. But it will be seen from these quotations that Playfair and Lawson Tait, two of the best obstetricians of the day, while noticing the same irregularity in Europe, still maintain that the first menstruation marks off the period at which puberty is established.

An attempt has been made to show that menstruation, as it first appears in this country, is not a normal phenomenon, but is abnormally brought on by what has been called the 'hot house treatment.' The influence of race, climate, heredity, mode of life, &c., has been altogether ignored. There is nothing to show that pre-menstrual intercourse is prevalent here. Cohabitation of husbands with their wives before the age of puberty, in my experience, does not appear to be a prevalent vice in the Hindu community. For, in my medical practice of the last 36 years, I did not meet with a single instance in which a husband attempted to have intercourse with his wife before the appearance of the first menses, or what we call *garbhádhán* or *punarbibáha* (*i.e.*, the second marriage ceremony.) On the other hand the following opinions, some at least of which are based on statistics collected from countries other than India, will clearly show the part played by climate, &c., in hastening the first appearance of menstruation:

(i.) "The mean age of the appearance of the catamenia appears to be about two years earlier in the warmer than in the more temperate climates, * * Montesque and Haller held that climate is the determining cause of this difference. More recent statistics are in the same direction. Thus Voigt's Researches show that in Norway the average first appearance is the age of 16·12. We may contrast this with the average at University College Hospital of 14·96. Joulin and Lagnan have collected observations on cases in various latitudes presented to the International Medical Congress at Paris in 1867, the general conclusions from which are in confirmation of the fact of the early appearance of menstruation in hot climates. And it would appear that climate is really the determining element in the difference observed between extremely hot and extremely cold climates, a difference represented by from 3 to 4 years."—GRAILY HEWITT'S DISEASES OF WOMEN, pp. 22-23.

(ii.) "Joulin divides the people subjected to his statistical analysis into three zones:—the temperate zone situated between lat. 33° and 54°; the second belonging to hot climate between 33° and the equator, the third corresponds to the cold regions, and extends from lat. 54° to the pole. Menstruation sets in the

temperate latitudes towards the fifteenth year; in the hot regions about the 12th year; and in the cold about the 15th or 16th; but great variations occur in each region, some of which are explained by the other influences specified. Generally speaking, heat promotes menstruation, cold checks it. Thus we know women who menstruate regularly, perhaps profusely in India, and scarcely see any thing in England. Others we know who in England menstruate only in summer. The easier classes who live luxuriously, generally menstruate early and freely, whilst those who live hard laborious lives menstruate later. Girls coming from the country to the great cities to work in sedentary occupations, hot rooms, and under new excitements often menstruate sooner. Certain races preserve the menstrual type proper to them in the country of their origin, even when transplanted Jewesses, whatever their habitat, menstruate generally somewhat earlier than girls of the Saxon origin."—BARNES' MIDWIFERY, pp. 41-42.

(iii.) "Normally this change takes place in the fourteenth or fifteenth year of life in this country; at and earlier date in hot climates."—LAWSON TAIT'S DISEASES OF THE OVARIES, p. 83.

(iv.) "The time of a first menstruation varies greatly according to the climate, constitution, and the kind of life that is led. In so far as climate is concerned, the influence exercised by it, quite marked, is by no means considerable, as was once supposed, and may be represented by a period of three years at the furthest between the extremes."—LEISHMAN'S MIDWIFERY.

(v.) "Menstruation in Europe usually occurs between 13 and 15. Its onset is earlier in warm climates."—HART AND BARBOUR.

(vi.) "Various circumstances have much to do with its (menstruation's) establishment. As a rule, it occurs somewhat earlier in tropical, and later in temperate climates. The influence of climate has been unduly exaggerated. It used to be generally stated that in the Arctic regions women did not menstruate until they were of mature age, and that in the tropics girls of 10 or 12 years of age did so habitually. The researches of Robertson, of Manchester, first showed that the generally received opinions were erroneous; and the collection of a large number of statistics corroborated his opinion. There can be no doubt, however, that a larger proportion of girls menstruate early in warm climates. Joulin found that in tropical climates, out of 1,635 cases, the largest number began to menstruate between the 12th and 13th years. So that, there is an average difference of more than two years between the period of its establishment in tropics and in

temperate countries. Harris states that among the Hindus 1 or 2 p. c. menstruate as early as nine years of age; 3 to 4 p. c. at ten; 8 p. c. at eleven; and 25 p. c. at twelve; while in London or Paris probably not more than one girl in 1,000 or 1,200 does so at nine years. The converse holds true with regard to cold climates, although we are not in possession of a sufficient number of accurate statistics to draw very reliable conclusions on this point; but out of 4,715 cases, including returns from Denmark, Norway and Sweden, Russia and Labrador, it was found that menstruation was established on an average a year later than in more temperate countries. It is probable that the mere influence of temperature has much to do in producing these differences, though there are other factors, the action of which must not be overlooked. Raciborski attributes considerable importance to the effect of race; and he has quoted Dr. Webb, of Calcutta, to the effect that English girl in India, although subjected to the same climatic influence as the Indian races, do not, as a rule, menstruate ealier than in England; while in Austria girls of the Magyar race menstruate considerably later than those of German parentage. The surroundings of girls, and their manner of education and living, have probably also a marked influence in promoting or retarding its establishment. Thus it will commence earlier in the children of the rich, who are likely to have a highly developed nervous organisation, and are habituated to luxurious living, and a premature stimulation of the mental faculties by novel-reading, society, and the like; while amongst the hardworked poor, or in girls brought up in the country, it is more likely to begin later. Premature sexual excitement is said also to favor its early appearance, and the influence of this among the factory girls of Manchester, who are exposed in the course of their work to the tempations arising from the promiscuous mixing of the sexes, has been pointed out by Dr. Clay."—PLAYFAIR'S MIDWIFERY, pp. 69-70.

(vii.) "This epoch (puberty) occurs earlier in warm climates, sanguine temperaments and highly cultivated and luxurious states of society; it is retarded by the opposite conditions; and in these islands it generally commences between the ages of 13 and 15 in females. Puberty, however, cannot be estimated by age alone. Even in this climate, the commencement of the period varies widely; thus the writer has seen instances of menstruation in children under ten. Puberty may be also modified by family or hereditary peculiarities, and the influence of various diseases."—THOMAS MORE MADDEN, OF DUBLIN.

I think I have quoted enough. Besides the authorities mentioned above, a whole host of other writers are unanimously of opinion that climate, &c., do affect the first appearance of the menses, and the early appearance of the catamenia is to be attributed more to the influence of climate, heredity, mode of living, &c., than to premenstrual intercourse with husbands, as has been wrongly and unwarrantably alleged.

The other point for consideration is whether the reproductive process interferes with the natural growth of an organism. I must say that the majority of writers are of opinion that it does. But quite recently a learned observer has controverted this theory. I extract his opinion below :—

"It has been asserted by Herbert Spencer Carpenter and others that there is an inherent opposition between growth and reproduction, because the assimilative processes cannot perform enough to supply material for the growth of mother and offspring both. These authors and their followers see in the commencement of reproduction the beginning of a tax upon the organism which stops its growth; but as Minot has pointed out, the cause is mistaken for the effect, and probably the loss of vital force is the stimulus causing reproduction. Certainly the decline which goes on from birth cannot be caused by a phenomenon which begins only when the decline is nearly completed. Direct observations show that Spencer's view is erroneous. For growing guinea pigs will bear one-third of their own weight of young, while growing, and still reach as full an adult size as those producing no young (Hensen). My own experiments suggest that they become even larger. We thus learn that the fundamental conception on which Spencer's theory rests is imaginary—that conception being that the assimilative power is approximately equal only to the needs of the growing animal. In reality there is a large excess of assimilation possible within normal limits."—CHARLES SEDGWICK MINOT, M.D., "Lecturer on Embryology at the Harvard University. (Hand-book of Reference of Medical Science. Edited by Marcus Beek."

"It would appear that a certain abundance in the power of generation is favourable to longevity. It forms an addition to vital power, and this power of procreation seems to be in the most intimate proportion to that of regenerating and restoring

one's self."—HUFELAND'S ART OF PROLONGING. Edited by "Erasmus Wilson."

My humble opinion coincides with that of Minot. I have known of instances of females becoming mothers of healthly children immediately after the completion of the twelfth year, and in none of these cases the mother made a long and protracted convalescence.

I now come to the main subject in hand, *viz.*, the infliction of permanent injury to the mother by early child-bearing. By 'permanent injury' are here meant all the remote effects of early consummation on the life and health of the female. It is impossible, within the limited time and space at my disposal, to take these individually and treat them with reference to their causation, so that I shall be able to judge how far they are due to early consummation. I shall therefore divide them into two classes, and make some general observations on them. The first class includes those disorders which are said to be due to early pregnancy; such as difficult labor, profuse bleeding after child-birth, rupture of the perineum, &c. In discussing this question we very much miss statistics based on the observation of a large number of facts. It won't do to generalise a conclusion from 13, 48 or even 127 cases. What we want is comparative table showing not only the relative frequency of such cases among girls of a tender age, but also their frequency as compared with the number of such cases among grown-up women. In other words, we must show that they are more frequent among young girls than among grown-up women. As long as we have not done that we cannot pass an opinion either way. It is in the experience of many of our practitioners that girls often go through labor in perfect safety. It might be said that these practitioners are not to be placed in opposition to the distinguished doctors who have given their opinions on the other side. But the former have a decided advantage over the latter. For every one case of difficult labor there are

scores of easy ones which we come to know of, not as physicians, but as members of the Hindu Society. Then again a case of hard labor first comes to the Indian physician for treatment, and it is only when the case has assumed a grave aspect that a European gentleman is called in for consultation. Thus we see that the native practitioners, while seeing and knowing all that comes to the notice of their European colleagues, see and know a great deal more besides. And it is this fact which entitles their opinions on this point greater respect.

A reference to the mortuary registers, as Dr. Joubert has well said, would have been given us material help in this matter. But these are in the first place very difficult to get at, and in the next, very unreliable.

During my practice extending over the last 36 years, I have attended many hundreds of cases of labor. The age of my patients varied from 11 years upwards. In one case the age was even less than 11 years. I can honestly say that I have not met with a single case of tedious labor between the ages of 11 and 15. On the other hand I have found that in *primiparae* above 20, tedious labor is almost the rule, rupture of the perineum very common, and instrumental interference is needed in some cases to complete delivery.

Lawson Tait, speaking of English women, says that "laceration of the perineum to some extent is the almost inevitable result of a first labor." But I can say without fear of contradiction that rupture of the perineum or of the cervix uteri is an extremely rare phenomenon in cases of first labor, in Bengal, between the ages of 11 and 15.

The second class includes those diseases that are supposed to be the indirect result of early child-bearing. Some of these are peculiar to the female, as displacement of the uterus, &c. The rest are common to both sexes. Now it is quite open to question to what

extent these are due to the alleged cause. As a medical gentleman has very truly remarked, "there are so many and varied influences at work, and it is so very difficult to determine what share is contributed by each to the total effects on our constitution, that it would be in the highest decree unscientific to speak of any one of them as having mainly to answer for evils that are certainly the joint effects of all of them combined." And yet this is what SCIENTIFIC men have actually been doing. The impression that is created in one's mind on reading the opinions of the doctor-reformers is that if our women are so sickly it is because they become mothers at a very early age. But if we look about a little, do we not find a multitude of circumstances which join their powerful influences to produce those effects to which early maternity is supposed chiefly to contribute? Will any body deny that climate, malaria, want of exercise, the insanitary condition of our houses and chiefly of our lying-in chambers, the improper management of the puerperal state, heredity, a luxurious and artificial style of living, the conditions of life in towns, and the increasing poverty of the people—all have a most pernicious influence on our constitution?

Authorities might be quoted by the score to support my position. There is no work on medicine that I know of, which does not lay particular stress on one or more of these influences with regard to the causation of disease, and all of them agree about *the one* fact of their having a most baneful effect on our constitution. I think it unnecessary to say more on the subject, and shall conclude my remarks by quoting a few observations on some of the influences spoken of above.

(i.) "It is abundantly proved that just as civilisation (and I use the word in its most literal sense) advances, so does the increment of sexual trouble among women. The flexions and atrophies, dysmenorhœas menorrhagias which affect town-bred women are comparatively unknown to their peasant sisters, and the healthy abundant procreative power of a country laborer's

wife is a frequent source of envy to the patrician dame."—LAWSON TAIT.

(ii.) "From cradle to puberty they (women) seem to be on fairly equal terms with men, but from that moment, through the whole period of active life, their existence is one of prolonged suffering. The great function of their lives is led up to by troubles, and from it endless suffering springs. This seems to be the lot of civilised women only, and to be the result of this civilisation—why we know not, we cannot even guess."—LAWSON TAIT.

(iii.) "The children of Londoners (London being the type of a crowded city), for instance, are especially difficult to rear, so much so indeed, that some lay it down as a rule that after three generations, every family that has uninterruptedly been born, lived and died in town becomes entirely extinct."—ACTION ON THE REPRODUCTIVE ORGANS.

(iv.) "The Hindus were of Caucasian origin, but having been exposed during countless generations to the same succession of depressing influences of climate, a temperament has been developed which differs widely from that of Europeans. This is seen in the want of energy, incapacity to withstand disease and their tendency to early exhaustion, possessing as they do neither muscular nor nervous power. In approaching the equator from each side, it has been found that the mortality is increased as we come nearer, and consequently the average duration of life is shortened; observation going to show that the professional number of individuals who attain a given age always differs in different climates, and the warmer the climate, other things being equal, the shorter the duration of life."—J. W. BYER'S HANDBOOK OF REFERENCE OF MEDICAL SCIENCE, BY MARCUS BECK, VOL. VIII, p. 429.

(v.) "In warm countries leucorrhœa is more common than elsewhere and co-exists with a great tendency to menorrhagia, which, indeed in common with the leucorrhœa, arises in great measure from deficient tonicity of the uterine vessels, frequently the forerunner of serious uterine disease. Moist and damp situations appear to have a similar effect. Thus the inhabitants of Holland, Belgium, and the fenny districts of England are said to be peculiarly liable to leucorrhœa."—GRAILY HEWITT.

(vi.) "Residence in damp or marshy districts, where malarious influences are rife, has been shown to be the cause of profuse menstruation in certain cases; here menorrhagia is not unfrequently present together with intermittent fever. Residence in tropical climates is in the case of Europeans followed in most cases by profuse menstruation: indeed, in most cases, where

women return to England from India in a broken down state of health, menorrhagia is a prominent symptom. Troublesome flexions of the uteries are also frequently found to be present in such cases."—GRAILY HEWITT.

(vii.) "The inhabitants of these countries (warm climates) are indolent and apathetic. The functions of the skin and liver are peculiarly active, a circumstance which exposes them to severe disease of these organs. The digestive functions are sluggish, and the nervous system is alternately excited and depressed. Remittent and intermittent fevers, dysentery and yellow fever are common. During the dry season disease tends to assume the ataxic, during the rainy season the adynamic form. Pulmonary consumption is frequently met with in the towns, in contradiction to received opinions."

J. HENRY BENNET, M.D.

CONCLUSION.

The third object of the Bill is to prevent the physical deterioration of the race. In this connection some preliminary remarks are necessary. The Bengalis, as a people, are weak, but as a rule, the middle-class men are the weakest. These people, of all other Bengalis, come in the closest contact with foreigners. So the latter, when speaking of the 'Bengalis,' really mean these middle-class men.

I have already noticed, while speaking of the health of females in this country, the causes that produce physical degeneration in them. These causes operate equally well on the males. But besides these there are other causes which require notice. These are excess of mental and absence of physical work, insufficient and improper food.

MENTAL WORK.

Formerly, except with the few, education was quite elementary. But now there is a growing desire for high education amongst us. Boys are put to school at a very early age, and books are forced upon them when they should be playing about. Both mind and body suffer in consequence. All our actions, whether bodily or mental,

are manifestations of energy. The source of this energy lies in the food we take. The quantity of food being limited, energy must also be limited. It follows that an increased expenditure of energy in any particular direction will be followed by a lessening in another. Mental work involves the greatest waste of energy. The greater the mental work, the less of energy will be left for the purposes of the body. Again every manifestation of energy means bodily waste. Mental work, therefore, will be attended with a very great amount of such waste. Unless this waste is compensated by an increased amount of wholesome food, the body will suffer. The evil effects of mental work are seen in other peoples besides the Bengalis. The Punjabis have a very good *physique*. But the Punjabi student is no better off than the Bengali. He is almost a pigmy as compared with the rest of his countrymen.

The evil effects of mental work do not stop with the completion of our education. In earning our livelihoods, we have to sit for hours before the office-desk and tax our brains to the utmost. Then, again, the hours of work are not suited to our habits and to the requirements of our climate. We have to work at a stretch for 7, 8 or even more of the hottest hours during the day. The evil consequences of such a life are indigestion, loss of appetite, acidity, weakness of the heart, leanness, sleeplessness, general and nervous debility, palpitation (sometimes), headaches, giddiness, and impairment of sight, &c.

The civilised nations of Europe do a far greater amount of mental work than we do, and are yet strong and vigorous. But then they take regular

Physical Exercise.

By proper exercise the digestion improves, the heart gets stronger, the chest expands, and the lungs perform their functions energetically, the blood gets thoroughly purged of all deleterious materials, and the

nervous system becomes active and energetic. In other words, physical exercise tends to counteract the evil effects of mental work. But the whole life-history of a Bengali gentleman is one of absolute bodily inactivity.

Physical exercise must co-exist with another element, without which it would be perfectly useless, nay, —positively injurious. Thus is

PROPER NOURISHMENT.

Both mental and physical work cause waste of tissue. The former causes the waste of the nitrogenous, and the latter that of the hydro-carbons of the body. In order, then, to keep the organs of the body healthy, a mixed food, consisting of the above-mentioned elements, must be taken in sufficient quantity. But food that is rich with nitrogen, as milk, fish, and meat, and with hydro-carbons, such as *ghee*, is beyond the reach of the majority of people. Consequently their food is not sufficient to meet the ordinary wants of the body, much less to make up for the increased waste caused by mental labor and ordinary physical work.

For the procreation of a healthful offspring, the maturity and healthful condition of the father are just as essentially necessary as the maturity and health of the mother. But while the so-called physiologists take into consideration the mother's condition only, they totally disregard and ignore that of the father at the time of conception. As a matter of fact, the condition of the father plays a very important part in determining the standard of health of the child. In this country young men get married at an early age and become fathers, while yet in college. By the time they get to be earning people, they find themselves encumbered with pretty big families, while their incomes are, as a rule, quite insufficient for even the ordinary wants of life. Their minds are weighed down with cares and anxieties, and their healths, which were already very materially affected by the hardships of college life, go on

steadily from bad to worse. It is impossible not to be struck with the famished and careworn expression of face that marks the appearances of these poor fellows. The Age of Consent Law, instead of mending matters, will only make them worse. For, while aiming indirectly (by its educative influence) at raising the marriageable age of girls, it leaves that of boys quite untouched. The inevitable consequence of this will be that our young men will become fathers by so much the sooner, and the pernicious effects of early paternity, which I have just noticed, will be proportionately increased.

The Age of Consent Bill, by fixing the time for consummation of marriage at 12 years, lays itself open to objection on medical grounds. Many girls menstruate at a later age, and where the menses are considerably postponed, it is generally owing to some constitutional cause, as, malarious cachecxia, scrofula, anaemia, &c. These girls need protection far more than heathy girls who menstruate earlier. But the Bill leaves them entirely unprotected. On the other hand, it will be seen from the opinions quoted above that the appearance of the menses means the *establishment* of puberty. The most reasonable, and at the same time the most natural thing, therefore, would be to fix upon the age of puberty (as indicated by the appearance of the menses), as the time when consummation of marriage should be allowed.

I have the honor to be,

SIR,

Your most obedient servant,

JUGGO BUNDO BOSE, M.D.

CALCUTTA, 9*th March* 1891.

Appendix C.

MEMORIAL, NOTES &c.,

SUBMITTED TO GOVERNMENT,

FROM

Báli and Uttarpárá

PROTESTING AGAINST THE CONSENT BILL,

And showing that it would interfere with Hindu religion.

A

PROTEST

AGAINST

THE "AGE OF CONSENT" BILL,

FROM

BÁLI, UTTARPÁRÁ

AND

The Neighbouring Villages.

Reprinted with an additional note examining the arguments of the Hon'ble Mr. Telang, Dr. Bhandarkar, and others.

PUBLISHED

BY

THE BÁLI SÁDHÁRANÍ SABHÁ.

February 19, 1891.

CALCUTTA:
Printed by H. C. Gangooly & Co.,
12, 19 & 20, Mangoe Lane.

In this Reprint of our Protest, necessitated by Government requesting to be furnished with a large number of copies of the publication, opportunity has been taken to include an Additional Note, in which an endeavour has been made to meet the arguments of the Hon'ble Mr. Telang, Dr. Bhandarkar, and other supporters of the Bill, and which has already been submitted to Government in Manuscript in continuation of our Memorial.

The Sanskrit texts quoted have in this Reprint been numbered consecutively from the beginning for convenience of reference.

A. C. B.

19-2-91.

NOTE.

THE Proceedings of the Public Meeting held at Báli on January 18, 1891, to consider the "Age of Consent" Bill and the Memorial (with an Addendum showing that the proposed measure would interfere with the Hindu Religion), adopted by the Committee appointed at the Public Meeting, are published by the Báli Sádháraní Sabhá.

AUBINÁSH CHUNDER BANERJEE,
Báli, *February 3, 1891.* *Honorary Secretary.*

PUBLIC MEETING AT BÁLI.

TO CONSIDER THE "AGE OF CONSENT" BILL.

A PUBLIC meeting of the inhabitants of Báli, Uttarpárá and the neighbouring places was convened by the Báli Sádhárani Sabhá, in the evening of Sunday, the 18th of January 1891, at the premises of the Báli Rivers Thompson School. More than 600 persons must have been present. The School hall was crowded, the verandas and side-rooms were also occupied and many had to go away for want of standing room. Among the persons present the names of the following may be given. Mahámahopádhyáy Dinabandhu Nyayaratna, Raja Piyari Mohan Mukhurji, C. S. I., Pandits Guru Charan Vidyabhushan, Amar Nath Bhattacharyya, Sri Chandra Vidyanidhi, Barada Prasad Vidyaratna, Ram Brahma Sen, Rai Aubinash Chandra Banurji, Bahadur, Babus Bhagavati Charan Banurji, Hem Chandra Mukhurji, Brindavan Chandra Mukhurji, Radha Nath Banurji, Jagat Chandra Banurji, B. L., Prasanna Kumar Chakravarti, Suryya Kumar Bhattacharyya, Nayan Chandra Maitra, Mukundaram Bhattacharyya, Kailas Chandra Mukhurji, Govinda Chandra Banurji, Girisa Chandra Chaturji, Mati Lal Sarkhel, Navin Chandra Maitra, Bhagavati Charan Chaturji, Harisa Chandra Banurji, Girisa Chandra Banurji, Rakhal Chandra Banurji, Dina Bandhu Banurji, Bhuvan Mohan Mukhurji, Prasanna Kumar Gosvami, Bhola Nath Sanyal, B. A., Kedar Nath Mukhurji, Sr., Kedar Nath Mukhurji, Jr., Haradhan Chaturji, Jogindra Nath Chaturji, Jiban Krishna Banurji, Kshetra Mohan Dhole, Navin Chandra Chaturji, Sukumar Ganguli, Kaviraj Barada Kanta Sen.

Raja Piyari Mohan Mukhurji, C. S. I., proposed that Mahámahopádhyáy Dinabandhu Nyayaratna be requested to take the chair, he said that it was fitting that a meeting the principal object of which was to

protest against a bill on the ground that it would interfere with Hindu religion should be presided over by so renowned a Sanskrit Scholar who had been honoured by the Government with the title of Mahámahopádhyáy. The proposal was seconded by Rai Aubinash Chandra Banurji, Bahadur, and was carried by acclamation.

Mahámahopádhyáy Dinabandhu Nyayaratna then took the chair and explained the objects of the meeting and then called upon Pandit Guru Charan Vidyabhushan the learned *Adhyápaka* of the local *Tol* or *Chatushpáthi* to move the first resolution which was as follows:—

"Resolved, that this meeting views with profound alarm the introduction into the Indian Legislative Council of the bill to raise the "age of consent" as the said bill is a direct interference with Hindu religion and usage, and is a clear infringement, both in letter and spirit, of the gracious Proclamation of 1858 of Her Majesty the Queen-Empress which is justly regarded as their great charter by the people of this country."

The resolution was seconded in an effective speech by Babu Jogindra Nath Chaturji and on being put to the meeting was carried unanimously.

The second resolution was in the following words:—

"Resolved, that the bill if passed into law, will hardly be fruitful of any good though it is certain to be fruitful of much evil—especially to the lower classes of the community, that is, to the vast majority of the people of this country, seeing that such momentous social changes as are contemplated by the bill can only be the effect of a gradual change of public opinion and not of a *fiat* of the legislature."

It was moved in an eloquent speech by Babu Brindavan Chandra Mukhurji, and was seconded by Babu Haradhan Chaturji, who in an able speech showed the evils that would arise if the bill became law. The resolution was carried by acclamation.

Babu Jagat Chandra Banurji, B. L., in a forcible speech moved the third resolution and Rai Aubinash

Chandra Banurji, Bahadur, seconded it and it was carried unanimously. The resolution ran thus—

"Resolved, that a humble memorial largely signed by the people of Báli and the neighbouring villages, be submitted to His Excellency the Viceroy and Governor-General in Council, pointing out the nature of the interference to Hindu religion and usage, and the evils that are certain to accrue if the bill is passed into law and praying that it may be abandoned; resolved also, that a Committee composed of the following gentlemen with powers to add to their number be formed to draw up the memorial and do all that is needful in the matter, *viz* :—

1. RAJA PIYARI MOHAN MUKHURJI, C. S. I.
2. MAHAMAHOPADHYAY DINABANDHU NYAYARATNA.
3. PANDIT GURU CHARAN VIDYABHUSHAN.
4. RAI KEDAR NATH CHATURJI, BAHADUR.
5. RAI AUBINASH CHUNDER BANURJI, BAHADUR,
   Secretary, Báli Sádháraní Sabhá.
6. BABU RADHA NATH BANURJI,
   President, Báli Sádháraní Sabhá.
7. BABU GANGA KANTA BHADURI,
   Vice-President, Báli Sádháraní Sabhá.
8. BABU DINA NATH GHOSH.
9. BABU JOGINDRA NATH CHATURJI."

The President then addressed the meeting amid loud cheers.

With a vote of thanks to the chair the meeting, separated at about 7 P. M.

(Sd.) DINABANDHU NYAYARATNA.

To

HIS EXCELLENCY THE RIGHT HON'BLE HENRY-CHARLES-KEITH, PETTY-FITZ.- MAURICE, MARQUIS OF LANSDOWNE, G. M. S. I., G. C. M. G., G. M. I. E., *Viceroy and Governor-General of India in Council.*

The humble memorial of the undersigned inhabitants of Báli, Uttarpárá, and the neighbouring Villages-

MOST RESPECTFULLY SHEWETH—

THAT your Excellency's memorialists humbly submit that the Bill recently introduced into the Supreme Legislative Council to amend the Penal Code and Criminal Procedure Code with a view to raise the 'age of consent' from 10 to 12 will, if passed into law, interfere directly with Hindu religion and usage and will thus be a clear infringement, both in letter and spirit, of the gracious Proclamation of 1858 of Her Majesty the Queen Empress which is justly regarded as their great charter by the people of this country.

2. Your Excellency's memorialists have noted with great hope the following words that fell from your Excellency's lips at the Council table when the bill was introduced, namely, "there is, so far as I am aware, no social or religious custom or observance among the Hindu Community to which this bill does the slightest violence." From these words your memorialists feel sure that if only your Excellency is convinced that the bill *does* violence to Hindu religion and religious and social custom and observance your Excellency will be pleased to order the withdrawal of the bill.

3. Your memorialists therefore humbly append a note from which it will abundantly appear that the religious ceremony of *Garbhádhána* is binding on all

Hindus, that according to the injunctions of the *Shástras* the ceremony, of which intercourse between husband and wife is an essential part, ought to be performed on the first appearance of a well-known physical condition in women called *ritu*, in Sanskrit, and that, in a considerable number of cases, this first appearance of the *ritu* takes place before a girl attains the age of 12, so that if the bill becomes law, it will prevent the performance of an important religious ceremony in accordance with the injunctions of the *Sástras*. Even if this ceremony were only based upon an interpretation of the *Sástras* by Raghunandan of Bengal, it would still be a religious ceremony, foi the people of Bengal have long accepted it as binding on their conscience, and the majority of the Hindus of Bengal, who have no direct knowledge of their sacred Scriptures, believe it to be a practice enjoined by their religion, which it is a sin for them to depart from. So long therefore as there are any Hindu subjects of Her Majesty, however small their number, who entertain this belief—(and that the number of such Hindus is not inconsiderable will not be denied by the most thorough-going supporters of the bill)—Her Gracious Proclamation enjoining those in authority under Her to abstain from all interference with the "*religious belief*" of "*any*" of Her subjects, would stand in the way of the present bill being passed into law.

4. Your Excellency's memorialists however feel sure that it will appear from the note referred to above that the interpretation of Raghunandan is the only interpretation that the texts of the scriptures can possibly bear. That *Garbhádhána* is one of the principal religious *Sanskáras* (sacramental observances) is seen in the most ancient texts from Manu downwards. Not only is it as old as Manu whose Institute is the most authoritative of the *Smritis*, but it is distinctly mentioned in the *Vedas* themselves. The texts quoted

in the addendum also prove most distinctly that the Hindu sages considered it a duty for husbands to know their wives at *each ritu;* so even without reference to the ceremonial part of *Garbhádhána* which, it is said, has fallen into desuetude in many parts of India and even in many families of Bengal, the intercourse between husband and wife at each *ritu*, which of course includes the first *ritu'* for there is nothing in the Sástras to exclude it from the operation of the general rule, is strictly enjoined by the *Sástras* on pain of heavy penalties both here and hereafter.

5. Your Excellency's memorialists beg to draw your particular attention to the texts of Parásara quoted in the addendum who is unquestionably the special authority for this age, the Kali yuga.

6. Your Excellency's memorialists have noted that some defenders of the bill lay stress on the fact that some Hindus, as some among the Kulin Brahmins of Bengal, give away their girls in marriage after the appearance of the *ritu.* Your memorialists do not admit all the facts alleged in this connexion and have no desire to examine all the arguments based upon them, for they deem it a sufficient reply to them to say that because injunctions of the *Sástras* are sometimes violated by individuals or even classes, the *Sástras* can not be regarded null and void. No religion could possibly be safe if the violation of its precepts by individuals or classes could be held to make it a nullity.

7. Your Excellency's memorialists have also noted that advocates of the bill rely on the abolition of the *suttee rite* as a precedent for the proposed interference with Hindu religion on the part of the British Government. That there is no parallel between the abolition of *suttee* and the passing of the present bill, will appear on the slightest comparison

of the two cases. In the case of the *suttee* no positive injunction of the *Sástras* had to be violated. The *Sástras* do not say to a widow "Thou shalt burn thyself on the funeral pile of thy husband." They give her the choice of three alternative courses—1*st.* re-marriage, 2*nd.* self-immolation, 3*rd.* a life of purity and religious austerity, and declared unmistakably at the same time that the last alternative was the best to adopt. When the British Government said to a widow "thou shalt not burn thyself," it did not leave her in a condition in which it was necessary for her to violate any injunction of the *Sástras.* She had only to adopt either of the two other alternative courses or—leaving aside re-marriage which present custom does not sanction,—at least one other, and that other the most praise-worthy one, namely, that of leading a holy life in this world. In the present case the *Sástras* say to every husband "Thou shalt perform *Garbádhána* (the first of the Hindu Sacramental observances) when thy wife gets the *ritu* on pain of the severest penalties;" to every wife they say "Thou shalt allow thy husband to perform *Garbhádhána* in thee when thou dost get the *ritu*, on pain of severe penalties both here and hereafter." Now by the present bill the British Government is going to say to every husband "Thou shalt not perform *Garbhádhána* when thy wife gets *ritu* if she is under 12 years of age, on pain of transportation or imprisonment for 10 years." Here the British Government directly and distinctly compels husbands to violate a distinct and positive injunction of the *Sástras.* The difference between the two cases of interference with Hindu religion therefore is patent. Again, the abolition of *suttee* was dictated by the imperative voice of humanity; when a woman was going to be burnt humanity demanded the obvious and only remedy, *viz.*, the prohibition of the burning. In the present case the plea of humanity does not avail. No one can assert that intercourse with a girl under

12 years of age, however undesirable and productive of evil in its consequences it might be thought by English physiologists to be, is necessarily an inhuman act. The patent fact that many girls in this country become mothers before or immediately after twelve, plainly shows that there is necessarily no humanity in the act itself. Let the ruffian who behaves brutally be punished and most condignly punished; but let not the act itself be made penal, when it does not cause hurt or other mischief.

8. Your Excellency's memorialists have also noted that some defenders of the bill have attempted to make much of the fact that the present bill introduces, no new principle in the criminal law of the land, that if it interferes with Hindu religion, the present provision of the Penal Code in this connection also interferes with Hindu religion in the case of girls who get their *ritu* before ten. To this it ought to be a sufficient reply to say that because the present law might in some very exceptional cases interfere with Hindu religion therefore it is allowable to interfere in a multitude of cases. For girls to get their *ritu* before ten is a rare occurrence, so rare indeed that it may almost be said to be phenomenal; but for girls between 11 and 12 it is quite an usual occurrence. Hindus were not naturally alarmed for their religion when 10 was fixed as the minimum limit of the age of coition. It would perhaps be more correct to say that they generally did not know the law on this point. Before the present agitation for reform, the age of consent was a thing known only to careful students of the Penal Code and was not known even to the higher classes. A few rare prosecutions under the law, and those for acts of ruffianism, had not taught the people that there was such a thing as an age of consent. In this sense the provision of the Penal Code in this connexion has really been a dead letter. When

however the age is going to be raised to 12, they can not but feel the most lively alarm. Nevertheless your memorialists can not but agree with the opinion expressed by the Honourable Sir Ramesh Chandra Mitra from his place in the Legislative Council, that it is a most glaring anomaly to make the heinous offence of rape of sexual intercourse between husband and wife under any circumstances. As he has happily pointed out some of the elements that constitute the heinousness of the offence of rape namely the violation of female chastity and the consequent indelible disgrace upon the husband and his family are entirely absent in such cases. This glaring anomaly in the criminal law should be remedied instead of being aggravated, as it would necessarily be, if the present bill became law. The anomaly is certainly not a necessary one and there can be no doubt that if the legislature gave the matter its serious consideration, it would readily find means to remove it altogether.

9. Your Excellency's memorialists think that enough has already been said to show that the case against the bill on the ground that it interferes with the religious beliefs of a considerable portion of Her Majesty's subjects is as strong as possible, and, that, if passed into law, it would be a deliberate violation of the pledge given to the people by the Proclamation of 1858. Many supporters of the bill therefore have been obliged to suggest an amended bill in which the time of the first appearance of the *ritu* in women should be fixed as the age of consent instead of the hard and fast 12 years age. Some of these supporters hold that this would even be an improvement on the original bill from the reformers' point of view, as, though it will have the effect of reducing the limit of age below 12 in some, it would materially raise the age beyond 12 in the majority of cases. Others however, having regard to the obvious difficulties of having no

fixed limit of age, have contented themselves with suggesting a *proviso* to the present bill to the effect, that in no case shall a Hindu husband be held to have committed the offence in question by sexual intercourse with his wife, if the wife shall have attained the age of puberty as evidenced by the occurrence of a certain well-known physical condition.

10. This brings your Excellency's memorialists to their second great objection to the bill; your memorialists believe that, in the words of the Resolution adopted at the largely attended public meeting at Báli on the 18th January 1891, "the bill if passed into law will hardly be fruitful of any good though it is certain to be fruitful of much evil especially to the lower classes of the community, that is to the vast majority of the people of this country, seeing that such momentous social changes as are contemplated by the bill, can only be the effect of a gradual change of public opinion and not of a *fiat* of the legislature."

11. Believing as your Excellency's memorialists do that the Government in this matter is actuated by the noblest of motives, your memorialists think that it is only necessary to make the Government realise the immense social change contemplated to be effected by the bill in question, to enable it to realise the hardship and consequently the wide spread discontent that it would cause. When some of your Excellency's memorialists tried to ascertain the real feelings of the lower classes towards the measure, they found that these people could not believe that Government really meant to pass such a bill; it was truly pathetic to see their incredulity—they felt confident Government could do nothing of the kind—for if Government could do this it could do anything, it could destroy them altogether. Your Excellency's memorialists are anxious to impress upon your Excellency's mind that marriage in the lower classes takes place long before

girls reach 10 years (the average age being only about 7 or 8), that parents unable to afford to maintain girls beyond that age, relieve themselves of the charge by giving them away in marriage (not unusually for pecuniary consideration). Poor people whose poverty makes them live more or less gregariously, once married, can not be expected to practise the self-restraint which the bill would require. It is no rare thing for girls to be mother of one or even two children before 12. The bill therefore would involve a sudden change in the domestic life of the people which can not be accomplished by legislature. The law would be broken in the vast majority of cases; the corrupt police of the country would be further corrupted; untold hardships would follow. The oppression at the hands of the Police and of unscrupulous men to be found in all societies would be simply unbearable. Girls for whose protection their husbands would be transported or sent to jail would have their lot in life made unspeakably bitter. Prosecution might lead very naturally to medical examination. So that all married girls in the country would very nearly be subject to something very similar to that odious law to which abandoned creatures were once subjected, but from which they were rescued by the humanity and conscience of civilized societies Attempts would be made to prove girls really above 12 to be under that age and conversely girls really under 12 would be made out to be over 12; and this would be only too easy in a country where there is no registration of births, the way in which births are registered even in municipalities being admittedly perfunctory. An impetus will thus be given to perjury from which the moral nature of the people will receive a contamination which can not be too much deplored. Whether the physical deterioration ascribed to early sexual intercourse be prevented or not, moral deterioration is sure to follow. The adjustment of the

habits and ways of living of the people to the new law would be, if indeed the adjustment is arrived at all in this way, through weary years of wrong, shame and degradation.

12. Your Excellency's memorialists are convinced that if Government does not feel the force of the objections against the bill it would be far better for the people to have a law prohibiting outright marriage itself before 12. Such a law could be more easily enforced and would not lead to a tenth part of the abuses and oppression which the present bill would produce if it became law. As to interference with religion and infringement of the Proclamation, both would be pretty much on the same level.

13. Your Excellency's memorialists humbly think that Government should have more faith in the potency of education which, slowly but surely will eradicate real evils in Indian society and should therefore double and treble, if possible the educational allotment if they wish social reform to progress by leaps and bounds. Already in the higher classes where the influence of education is felt, the age of marriage has gradually been raised considerably, and the same educational process as it goes on will in time introduce further changes. As the lower classes are gradually brought under the influence of education the desired changes will be introduced in their ways and habits also. The attempt to hasten social reform by legislative pressure has one incidental disadvantage. As pointed out by the Hon'ble Sir Romesh Chandra Mitra, it produces an unhealthy re-action and prevents the orthodox and advanced parties from gradually coming to an agreement in the direction of reform.

14. In conclusion Your Excellency's memorialists humbly pray that Your Excellency may be pleased to give your favourable consideration to the facts

and arguments set forth above and order the abandonment of the proposed bill to raise the age of consent.

And your memorialists as in duty bound shall ever pray.

(SD.) DINABANDHU NYAYARATNA
PIYARI MOHAN MUKHURJI
KEDAR NATH CHATURJI
AND
About two thousand others.

———:———

ADDENDUM.

ADDENDUM.

The ceremony of *Garbhádhána* is prevalent at least in Bengal. It is a ceremony (of which coition between husband and wife is an essential part) which has to be performed when a wife gets the *ritu* (the catamenia) for the first time, and as many girls in this country get their first *ritu* before 12, the ceremony has in their case to be performed before that age.

A custom has the force of *Sástra* unless it can be shown to be opposed to it. The following texts (among numerous others) bear on this point:—

१ । वेदः स्मृतिः सदाचारः स्वस्य च प्रियमात्मनः ।
एतच्चतुर्व्विधं प्राहुः साक्षाद्धर्म्मस्य कारणम् ॥

मनु॰ २।१२ ।

1. Religion is based upon these four, the *Vedas*, the *Smritis*, good custom and that which is agreeable to one's own self [conscience].

Manu II. 12.

२ । येषु स्थानेषु यच्छौचं धर्म्माचारश्च यादृशः ।
तत्र तन्नावमन्येत धर्म्मस्तत्रैव तादृशः ॥
येनास्य पितरो याता येन याताः पितामहाः ।
तेन यायात् सतां मार्गं तेन गच्छन्नदुष्यति ॥

शुद्धितत्त्वधृतमरीचिवचनम् ।

2. The purification and religious usages of any particular place should never be disregarded in that place, for even such is religion [duty] for that place.

The path followed by fathers and grand-fathers, that path of the good should be followed; no blame attaches to one following that path.

Text of Marichi quoted in
Raghunandan's Suddhitattwa.

३। धर्मशास्त्रविरोधेतु युक्तियुक्तो विधिः स्मृतः।
व्यवहारो हि बलवान् धर्मस्तेनावहीयते॥

व्यवहारतत्त्वधृतनारदवचनम्।

3. In case of contradiction between *Dharmasástras*, the rule is (to follow) reason (or custom*), Custom also is of force, for by it *Dharma* (duty) is known.

A custom might not be considered valid if it could be shown to be opposed to the *Sástras*; but the onus of proof that any particular custom is opposed to the *Sástras* lies upon those who make the assertion. In the absence of any one taking upon him this onus, it is not necessary to support the custom by proving it to be based upon the *Sástras*. Nevertheless the proof that it is so based is as complete as could be wished. The custom is enjoined in the digest of Hindu *Dharmasástras* entitled *Ashtavinsatitattwa*, compiled by the great Raghunandan of Bengal, which is accepted throughout Bengal as a work of the very greatest authority. It is enjoined also in other digests, as those of Bhavadeva, Haláyudha, Váchaspati Misra, Pasupati and others.

The ceremony, however, is not a new invention of Raghunandan or the authors of the other digests. It is based on the sacred scriptures of the Hindus.† The scriptures consist chiefly of the *Vedas*, the *Smritis* and the *Puránas*. It will be seen that the ceremony of *Garbhádhána* is countenanced in them all.

These will be taken in their order.

I. The Vedas :—

The ceremony is distinctly mentioned in the following passage of the Rigveda, where prayers are

* *Yukti* has here been explained to mean *custom*, on the authority of *Jimutáváhana's Vyavaháramátriká* :—" *Yuktirnyáyah sa cha lokavyavaháraḥ*"= *Yukti* is reason and that is custom of men.

† On custom and the authority of commentators, however, some further remarks are made below.

offered to certain Vedic Gods and Goddesses to cause impregnation, the very words used in making the prayer, namely, *Garbhám Dhehi*, giving rise to the compound word *Garbhádhána*.

४ । विष्णुर्योनिं कल्पयतु त्वष्टा रूपाणि पिंशतु ।
आसिञ्चतु प्रजापतिर्धाता गर्भं दधातु ते ॥
गर्भं धेहि सिनीवालि गर्भं धेहि सरस्वति ।
गर्भं ते अश्विनौ देवा वाधत्तां पुष्करस्रजा ॥
हिरण्मयी अरणीयं निर्मन्थतो अश्विना ।
तं ते गर्भं हवामहे दशमे मासि सूतवे ॥

ऋग्वेद १०म मण्डल १२श अनुवाक्
१८४ सूक्त १।२।३ ऋक् ।

4. May Vishnu make thy [the wife's] organs of generation capable of impregnation, may *Twashtri* mould the form [*i.e.*, evolve the embryo]. May Prajápati sprinkle it [with vital humours (?)] May Dhátá sustain it. O Siniváli, cause impregnation ; O Saraswati, cause impregnation. O Aswins, garlanded with the lotus, cause impregnation.

As the Aswins churned [rubbed] the golden *arani* [the wood used to kindle fire by attrition] for impregnating it [with fire], I call [upon the Gods] for such impregnation in thee to be brought forth at the tenth month.

Rigveda Mandal X, Anuvak 12,
Súkta 184, *Riks* 1, 2, 3.

The first two of the above three mantras of the Rigveda are also found word for word in the *Sáma Veda*, Mantra Bráhmana, 1st Prápathaka.

In the *Sútra* literature the ceremony indicated in the above passages is clearly enunciated. Aswaláyana Baudháyana, Páraskara, Gobhila and other authors of the *Grihya Sútras* enjoin the ceremony. The texts are quoted below.

५। उपनिषदि गर्भलम्भनं पुंसवनमनवलोभनञ्च।

आश्वलायन गृह्यसूत्रं १।१३।१।

5. *Garbhalamdhana** [*Garbhádhána*], *Punsavana*, and *Anavalobha* are mentioned in the Upanishads.

Grihya Sútras of Aswaláyana 1, 13, 1.

६। अथर्त्तुमत्याः प्राजापत्यमृतौ प्रथमेऽनुकूलेऽहनि**उपगच्छेत्

आश्वलायनगृह्यपरिशिष्टम् १।२५।

6. Now (about) the *Prajápatya* (a religious observance) of a woman who has got the *ritu* :—At the first *ritu* on a favourable day [after the observance of certain rites, &c.] the husband must have intercourse with his wife.

Aswaláyana Grihya Parisishta, I. 25.

७। यदृर्त्तुमती भवत्युपरतशोणिता तदा सम्भवकालः॥

दक्षिणेन पाणिनोपस्थमभिमृशेद्विष्णुर्योनिं

कल्पयत्वित्यर्चा गर्भं धेहि सिनीवालीति॥

समाप्यर्चौ सम्भवतः।

गोभिलगृह्य सूत्रं २प्र ५का ८।९।१० सूत्राणि।

7. When the flow has ceased in the woman with *ritu*, then is the time of generation.

The genital organ should be touched with the right hand with [*i. e.*, pronouncing] the *rich* "Vishnuryonim Kalpayatu" [may Vishnu make thy organs of generation capable of impregnation] and the *rich* "Garbhám dhehi Siniváli" [O Siniváli, cause impregnation]. After finishing the *rich's* the two (*i. e.*, husband and wife) should have intercourse.

Grihya Sútras of Gobhila II. 5, 8, 9 & 10.

८। तामुद्धह्य यथर्त्तु प्रवेशनम्।

पारस्कर गृह्यसूत्रं १का ३४पृ ४पं।

8. After marrying her [the wife] intercourse (should take place) duly at *ritu*.

* Sir Monier Williams in his Sanskrit-English Dictionary gives the following meaning of the word, "A ceremony performed for the sake of facilitating conception." p. 285, col. 2.

९। ऋतुस्नातां ऋतुसमावेशने जपे द्विष्णुर्योनिमिति।

बौधायन गृह्य सूत्र १० अध्याय।

प्रजामुत्पादयेदौषधमन्त्रसंयोगेन।

बौधायन प्रमाणम्।

9. In the intercourse at *ritu* with the wife who has performed the [prescribed] ablution [usually on the fourth day of the *ritu*] the *rich* "Vishnur-Yonim &c.," should be repeated inaudibly.

Grihya Sutra of Baudhayana.

With the application of Medicines and *Mantras* offspring should be begotten.

Baudhayana-pramanam.

In the Rigvidhána as quoted in the Nirnaya Sindhu the following occurs :—

१०। गर्भाधानं ततः कुर्य्यात् सुपुत्रो जायते ध्रुवम्।

10. Then *Garbhádhána* is to be performed [so that] a worthy son is sure to be born.

II. After the *Vedas* come the *Smritis*. The chief *Smritis* or *Dharmasástras* are the works of the *rishis* whose names are given in the following text :—

११। मन्वत्रिविष्णुहारीतयाज्ञवल्क्योशनोऽङ्गिराः।

यमापस्तम्बसंवर्त्ताः कात्यायनवृहस्पती॥

पराशरव्यासशङ्खलिखिता दक्षगोतमौ।

शातातपो वशिष्ठश्च धर्म्मशास्त्रप्रयोजकाः॥

याज्ञवल्क्य १म अः ४।५।

11. Manu, Atri, Vishnu, Harita, Yájnavalkya, Ushanas, Angiras, Yama, Apastamba, Sambarta, Kátyayana, Vrihaspáti, Parásara, Vyása, Sankha, Likhita, Daksha, Gotama, Sátátapa and Vasishtha—these are the institutors of *Dharmasástras* (*i. e.*, law).

Yájnavalkya I, 4 & 5.

Besides the *Smritis* of these twenty Sages there are *Smṛitis* ascribed to Nárad, Devala and others.

Texts from most of these *Smritis* are quoted below:—

१२। निषेकादिश्मशानान्तो मन्त्रैर्यस्योदितो विधिः।

मनु २।१६।

12. All whose observances (*Sanskaras*) beginning with *Nisheka* * (*i. e., Garbhádhána*) and ending with cremation rites have been declared to be performed by *Mantras.*

Manu II. 16.

१३। वैदिकैः कर्म्मभिः पुण्यैर्निषेकादिर्द्विजन्मनाम्।
कार्य्यः शरीरसंस्कारः पावनः प्रेत्य चेह च॥
गार्भैर्होमैर्जातकर्म्मचौड़मौञ्जीनिबन्धनैः।
वैजिकं गार्भिकञ्चैनो द्विजानामपमृज्यते॥

मनु २।२६, २७।

13. By the sacred Vedic rites of *nisheka* [conception-rite] and the rest, the purification of the bodies of the twice-born should be performed to make them pure both here and hereafter.

The seminal or uterine evils in the twice-born are wiped away by *homa* [oblation to the Gods by casting clarified butter into fire], performed on the occasion of *Garbhádhána, Jata-karma, Chura,* and *Maunji* [these are the *Sanskaras* or sacramental observances at the time of impregnation, birth, tonsure, and binding on the *munja* string i. e., the *upanayana*].

Manu II. 26, 27.

१४। ऋतुकालाभिगामी स्यात् स्वदारनिरतः सदा।

मनु ३।४५।

14. Always devoted to one's own wife, one shall have intercourse with her at the time of *ritu.*

Manu III. 45.

* Sir Monier William gives the meaning of *Nisheka* as the ceremony performed upon impregnation.

१५। गर्भस्य स्पष्टताज्ञाने निषेककर्म्म।

विष्णुस्मृतिव्याख्यायां केशववैजयन्ती।

15. The act of impregnation must be made on knowledge of *Garbha* [which here has been explained to mean *ritu*] being manifest.

Kesava-vaijayanti in explaining *Vishnu-Smriti.*

१६। गर्भाधानवदुपेतो ब्रह्मगर्भं सन्दधाति।

हेमाद्रि-रघुनन्दन-हलायुध-धृतहारीतवचनम्।

16. One having intercourse with one's wife with the observances laid down for *Garbhádhána* [the pronouncing of the *rich's* " *Vishnur Yonim &c.*"] causes impregnation fitting the offspring for Vedic observances.

१७। गर्भाधानमृतौ पुंसः सवनं स्पन्दनात् पुरा।

याज्ञवल्क्य १।११।

17. *Garbhádhána* at the time of *ritu* and *Punsavana* before the quickening [of the child in the womb].

Yajnavalkya I. 11.

१८। आहिताग्निरुपस्थानं य कुर्य्यान्नतु पर्व्वणि।

ऋतौ गच्छेन्न भार्य्यायां सोऽपि कृच्छ्रार्द्धमाचरेत्।

उशनस् ८।८५।

18. He who does not approach the consecrated fire with prayer and worship at the time of the full and new moon and he also who does not approach his wife at the time of *ritu* shall perform [the penance known as] *Krichchhrárdha.* *

Ushanas IX. 85.

१९। साध्वाचारा न तावत् स्याद्रजोयावत् प्रवर्त्तते।

वृत्ते रजसि गम्या स्त्री गृहकर्म्मणि चेन्द्रिये॥

प्रथमेऽहनि चाण्डाली द्वितीये ब्रह्मघातिनी।

तृतीये रजकी प्रोक्ता चतुर्थेऽहनि शुध्यति॥

अङ्गिरस् ३७।३८।

* The nature of this penance is explained below.

19. A woman is impure so long the catamenia continues. After it has ceased women are fit for household duties and for sexual connexion. On the first day [of the catamenia] she is a *chandal* woman, on the second a murdress of a Brahmin, on the third a washer woman, on the fourth is she purified.

Añgiras 37, 38.

२० । ऋतुस्नातान्तु यो भार्य्यां सन्निधौ नोपगच्छति ।

घोरायां भ्रूणहत्यायां युज्यते नात्र संशयः ॥

हेमाद्रिधृतयमवचनम् ।

20. He who does not approach his wife after her ablution at the *ritu*, to him attaches [sin of] terrible *Bhruna-hatyá* [destruction of the child in the womb].

Text of Yama quoted in Hemádri.

२१ । स्नानं रजस्वलायास्तु चतुर्थेऽहनि शस्यते ।

वृत्ते रजसि गम्या स्त्री नानिवृत्ते कथञ्चन ॥

आपस्तम्ब ७।१ ।

21. The ablution of a woman with *ritu*, on the fourth day is praise-worthy. After the flow has ceased intercourse should be had, but never before it has ceased.

Apastambá VII. 1.

२२ । कृत्वा गार्ह्याणि कर्म्माणि स्वभार्य्यापोषणे रतः ।

ऋतुकालाभिगामी स्यात् प्राप्नोति परमां गतिम् ॥

संवर्त्त । ९६ ।

22. A man performing his domestic duties and supporting his own wife, should have intercourse with her at *ritu*, [thus] does he attain the most excellent condition [eternal bliss].

Sambarta, 96.

२३ । विवाहादिः कर्म्मगणो य उक्तो

गर्भाधानं शुश्रुम यस्य चान्ते ।

विवाहादावेक एवात्र कुर्य्या

च्छ्राद्धं नादौ कर्म्मणः कर्म्मणः स्यात् ॥

कात्यायन १।५।५ ।

23. All the rites that have been mentioned beginning with marriage and at whose end, we hear, is *Garbhádhána*—in these the *Sraddha* (the *Sraddha* known as the *ávyudayika*) has to be performed only on the first. *Sanskára* and not at each *Sanskára*.

Kátyáyana I. 5, 5,

२४। ऋतु स्नातान्तु, यो भार्य्यां सन्निधौ नोपगच्छति।
अवाप्नोति स मन्त्रात्मा भ्रूणहत्यामृतावृतौ॥ १४॥
ऋतुस्नाता तु या नारी भर्त्तारं नोपसर्पति।
सा मृता नरकं याति विधवा च पुनः पुनः॥ १३॥

पराशर ४।१३, १४।

24. He who being at hand does not approach his wife after ablution at *ritu*, that sinner is guilty at each *ritu* of *Bhruna-hatya* [murder of child in the womb].

That woman who does not approach her husband after ablution at *ritu*, goes to hell after death and becomes a widow again and again.

Parasara, IV. 13, 14.

It is to be borne in mind that *Parasara* is the special authority for this age, *i. e.*, the *Kali Yuga*. This point has been incontestably established by Pandit Iswara Chandra Vidyásagar in his famous work on widow marriage (*Vidhava Vivaha*). So that a positive injunction of Parásara is peculiarly binding on the conscience of the Hindus of this age.

२५। गर्भाधानं पुंसवनं सीमन्तो जातकर्म्म च।

व्यास १।१३।

ऋतुकालेऽभिगम्यैवं ब्रह्मचर्य्यं व्यवस्थितः।
गच्छन्नपि यथा कामं न दुष्टः स्यादनन्यकृत्॥

व्यास २।४५।

25. *Garbhádhána*, *Punsavana*, *Simanta*, and *Játakarma* [are rites ordained in the *Sástras*].

Vyása, I. 13

In this way approaching one's wife at the time of *ritu* when observing *Bramhacharya* [a holy life of religious austerity] and also approaching her at pleasure [*i. e.*, at the desire of the wife], no blame attaches to a person who knows no other woman.

Vyása, II. 45.

२६। गर्भस्य स्फुटताज्ञाने निषेकः परिकीर्त्तितः।

ततस्तु स्पन्दनात् कार्य्यं सवनन्तु विचक्षणैः॥

शंख २।१।

26. *Nisheka* [impregnation] should be performed on knowledge of the *ritu* being manifest. After that the wise, when there is quickening [of the child in the womb], should perform [the ceremony of] *Savana* [*Punsasavana*].

Sankha II. 1.

२७। ऋतावुपेयात् सर्वत्र वा प्रतिषिद्धवर्ज्जम्।

गौतम ५म अध्याय।

गर्भाधान पुंसवन-सीमन्तोन्नयन···इत्येते चत्वारिंशत्संस्काराः।

गौतम ८म अध्याय।

27. Have intercourse with your wife at *ritu* or at all times excepting the prohibited days [like the days of full and new moon, &c.]

Gautama, Chap. V.

Garbhádhána, *Punsavana*, *Simantonnayana*, *&c.*, these are the forty *Sanskaras*.

Gautama, Chap. VIII.

२८। नित्योदकी नित्ययज्ञोपवीती

नित्यस्वाध्यायी पतितान्नवर्ज्जी।

ऋतौ गच्छन् विधिवच्च जुह्वन्

न ब्राह्मणश्च्यवते ब्रह्मलोकात्॥

वशिष्ठ ८म अध्याय।

28. A Brahmin, who ever performs the religious ceremonies performed with water [as ablutions of the body and oblations to the dead, &c.], who ever retains the holy thread [in due position], who is ever engaged in the due study of the Vedas, who ever eschews the food of

the fallen, who has intercourse with his wife at *ritu*, who duly performs the sacrificial *homa*, [such a Brahmin] does not fall away from *Brahmaloka* [the world or abode of Brahma in heaven where pious spirits dwell].

Vasishtha, Chap. VIII.

२९। ऋतुस्नातां तु यो भार्य्यां सन्निधौ नोपगच्छति।
घोरायां भ्रूणहत्यायां युज्यते नात्र संशयः॥

वाचस्पतिधृतशातातपवचनम्।

29. He who does not approach his wife after [her] ablution at *ritu*, to him attaches the terrible sin of *Bhruna-hatyá* [destruction of child in the womb].

Text of Sátátapa quoted by *Vachaspati*.

३०। ऋतौ न गच्छेद्भार्य्यां यः सोऽपि कृच्छ्रार्द्धमाचरेत्।

प्रायश्चित्त-विवेक-धृत-वृहस्पति वचनम्।

30. He also who does not have intercourse with his wife at *ritu*, should perform the penance of *Krichchhrardha*.

Text of Vrihaspati quoted in Práyaschitta Viveka.

३१। ऋतुस्नातां तु यो भार्य्यां स्वस्थः सन्नोपगच्छति।
स चाप्नोति न सन्देहो भ्रूणहत्या मृतावृतौ॥

हेमद्रिधृतदेवलवचनम्।

31. He who, being in health, does not have intercourse with his wife after her ablution at *ritu*, undoubtedly incurs at each *ritu* the sin of *Bhruna-hatyá*.

Text of Devala quoted in Hemadri.

३२। ऋतुस्नातान्तु यो भार्य्यां सन्निधौ नोपगच्छति।
पितरस्तस्य तं मासं तस्मिन् रजसि शेरते॥

हेमाद्रिधृतबौधायन वचनम्।

32. He who does not approach his wife after her ablution at *ritu*—his ancestors throughout that month lie in that catamenial discharge.

III. Lastly come the *Puránas*—It will however be enough to give only a few texts.

३३ । ऋतुकालाभिगामी स्यात् यावत् पुत्रो न जायते ।
ऋणापकर्षणार्थं हि पुत्रस्योत्पादनं प्रति ॥

आह्निकतत्त्वधृत कूर्मपुराणवचनम् ।

33. Have intercourse at the time of *ritu* so long as a son is not born ; for the birth of a son is necessary to repay the debt [due to one's ancestors].

Text of the Kurmapurán quoted in Ahnikatattwa.

३४ । जन्मन्यथोपनयने * * * ऊढ़ायाः प्रथमार्त्तवे ।

वृद्ध पुराण वचनम् ।

34. In the ceremonies to be performed at the time of birth, at the investiture with the holy thread and at the first *ritu* of the married [girl], [the *ávyudayika sráddha* should be performed].

Text of Brahmapurána quoted in Prithwichandrodaya.

३५ । ऋतुकालाभिगमनं धर्म्मोऽयं गृहिणां परः ।

स्कन्द पुराण वचनम् ।

35. To have intercourse at the time of *ritu*, this is a supreme duty of the householder.

Text of Skandapurána.

From the above texts there cannot be the least doubt that *Garbhádhána* at the time of the *ritu* is enjoined in the *Sástras*. Some of the texts, indeed, make no mention of the Sacramental part of the ceremony, but simply enjoin that a husband must know his wife at each *ritu*. So that even if the sacramental part of *Garbhádhána* is dispensed with, as, it is said, it is dispensed with in many parts of the country, the other part *viz.* that of coition must be complied with. This being the general rule to which no exception is made in the case of *ritu* taking place before 12, any law absolutely prohibiting sexual intercourse before 12, cannot but directly lead to a violation of the injunctions of the *Sástras.*

To strengthen the argument however it seems necessary to establish that according to the *Sástras* marriage itself must take place before the appearance of the *ritu.* For the question might very well be asked that if sexual intercourse at each *ritu* of a woman is so necessary, what about girls getting the *ritu* before marriage? The answer is that the *Smritis* are unanimous in laying down that girls should be married before they get the *ritu.* Before quoting texts from other *Smritis* it is desirable to examine the well-known text of Manu, which has given rise to some misapprehension. The text in question is the following:—

३६ । त्रिंशद्वर्षो वहेत् कन्यां हृद्यां द्वादशवार्षिकीम् ।
त्र्यष्टवर्षोऽष्टवर्षां वा धर्मे सीदति सत्वरः ॥ ९ । ९४ ।

36. "At thirty years of age a man may marry a beloved girl of twelve years or, (if) he is thrice eight years, (he may marry a girl) of eight years; if his religious duties would (otherwise) be unfulfilled (he may marry at once.)"* IX. 94.

From this it has been argued that as the great law-giver fixes 12 as the age of the marriage of girls, and as *ritu* might take place before that age, the sage saw no harm in keeping girls unmarried till 12, though they might get the *ritu* in the mean time. This is evidently a great error. Kulluka, Medhatithi in fact all the commentators of Manu agree in interpreting the text as not meaning to lay down 12 and 12 only as the marriageable age (indeed, in the second half of the text, eight is the age given when the husband's age is 24), but only as a sort of approximate limit of the maximum age of marriage. For the rule is imperative that girls must be given away in marriage before

* This is the rendering in Dr. Burnell's translation, edited by Dr. Hopkins, (London Trubner & Co., 1884, p. 261) where the following note is added.

"K [Kulluka] refers this to the duties of the house-holder, as the Brahman must marry on completing his studentship, which may perhaps be ended before he is twenty-four years old. The Verse is a general injunction that the bride should be about a third as old as the bridegroom; the time given in the text being only used as an illustration (Medha. & K.)"

they get the *ritu.* Before quoting the texts of other law givers in support of this view it may be useful to quote a text or two from Manu himself:—

३७। कालेऽदाता पिता वाच्यो वाच्यश्चानुपयन् पतिः।
मृते भर्त्तरि पुत्रस्तु वाच्यो मातुररक्षिता॥

मनु ९। ४।

37. A father is culpable not giving away his daughter in marriage at the [proper] time [which has been interpreted to mean before *ritu*], the husband is culpable not approaching his wife at [due] time [*i. e.*, at the time of *ritu*], and a son is culpable not protecting his mother, her husband being dead.

Manu IX. 4.

३८। उत्कृष्टायाभिरूपाय वराय सदृशायच।
अप्राप्तामपि तां तस्मै कन्यां दद्याद् यथाविधि॥

मनु ९। ८८।

38. To a bridegroom who is good, worthy and equal [in caste], a daughter may duly be given away even though she has not attained the proper marriageable age.

Manu IX. 88.

These two texts leave no doubt in the mind of any candid reader that Manu strongly deprecated the postponement of marriage to period after the *ritu.* There is also another well-known text of the great law-giver, *viz* :—

३९। काममामरणात्तिष्ठेद् गृहे कन्यर्त्तुमत्यपि।
नचैवैनां प्रयच्छेत्तु गुणहीनाय कर्हिचित्॥

मनु ९। ८९।

39. Far better that a daughter stay till death in the [father's] house attaining *ritu,* than that she should be given away to an unworthy bridegroom.

Manu IX. 89.

which also implies that it is an evil not to give away a girl before *ritu.* The law-giver says that it is

better that this evil should be borne than that a girl should be married to a husband without the necessary worth.

The following texts from other *Smritis*, however, will leave no doubt whatever on the point that the Hindu *Sástras* lay down imperatively that marriage of a girl ought to take place before *ritu*.

४० । आवृत्ते तीर्थगमने प्रतिज्ञाते च कर्म्मणि ।
कालात्यये च कन्यायाः कालदोषो न विद्यते ॥
अष्टवर्षा भवेद् गौरी नववर्षा तु रोहिणी ।
दशमे कन्यका प्रोक्ता अत ऊर्द्ध्वं रजस्वला ॥
तस्मात् सम्वत्सरे प्राप्ते दशमे कन्यका वधैः ।
प्रदातव्या प्रयत्नेन न दोषः कालदोषतः ॥

उद्वाहतत्वधृत अङ्गिरो वचनम् ।

40. When a pilgrimage has to be repeated (*i.e.*, performed after it has been performed before), when a ceremony has already commenced, when a girl's marriageable age is over, then there is no *káladosha* [*i.e.*, the fact that the time according to astrological calculations is not fit for the performance of certain religious rites, should then be disregarded]. A girl when eight years old is styled *Gauri*, when nine a *Rohini* when 10 she is a *kanyaka*; over that she is a *rajasvala* [*i.e.*, one who has reached the age of menstruation]. Therefore a girl on attaining the tenth year should, with care, be given away in marriage by the wise [and then] there is no *kaladosha*.

Text of Angiras quoted in Udvaha-tattwa.

४१ । अष्टवर्षा भवेद् गौरी नववर्षातु रोहिणी ।
दशवर्षा भवेत् कन्या अत ऊर्द्ध्वं रजस्वला ॥
प्राप्ते तु द्वादशे वर्षे यः कन्यां न प्रयच्छति ।
मासि मासि रजस्तस्याः पिबन्ति पितरः स्वयम् ॥
माता चैव पिता चैव ज्येष्ठो भ्राता तथैवच ।
त्रयस्ते नरकं यान्ति दृष्ट्वा कन्यां रजस्वलाम् ॥

यस्तां समुद्वहेत् कन्यां ब्राह्मणोऽज्ञानमोहितः ।
असम्भाष्यो ह्यपाङ्क्तेयः स ज्ञेयो वृषलीपतिः ॥
यः करोत्येकवारेण वृषलीसेवनं द्विजः ।
स भैक्ष्यभुग् जपन् नित्यं त्रिभिर्वर्षैर्विशुध्यति ॥

पराशर ७ । ६, ७, ८, ९, १० ।

41. A girl age eight is *Gauri*, aged nine *Rohini*, *aged ten Kanya* over that age she is *Rajasvala*. He who does not give away his daughter in marriage when she attains her 12th year—his ancestors drink her menstrual evacuation at each month, her, mother and her father and her eldest brother, these three go to hell, if they see her menstruating [before giving her away in marriage]. The ignorant Brahmin also who marries the girl who has menstruated, become one who should not be conversed with, with whom people should not sit in the same line, he is known as the husband of a *Vrishali*, [*i.e.*, a woman who is 12 years old and in whom menstruation has commenced and who is unmarried]. The Brahmin who has intercourse with a *Vrishali* even once can only be purified by the penance of living on alms and always performing *Japa* [repeating prayers &c., inaudibly] for three years.

Parásara VII. 6, 7, 8, 9 & 10.

४२ । प्राप्ते तु द्वादशे वर्षे यः कन्यां न प्रयच्छति ।
मासि मासि रजस्तस्याः पिता पिबति शोणितम् ॥
माता चैव पिता चैव ज्येष्ठो भ्राता तथैव च ।
त्रयस्ते नरकं यान्ति दृष्ट्वा कन्यां रजस्वलाम् ॥

यम १ । १२ ।

42. He who does not give away a girl in marriage on her attaining the 12th year—his father drinks her [menstrual] blood every month. Her mother and father and also the eldest brother these three go to hell, seeing her menstruating before marriage.

४३ । प्रयच्छेन् नग्निकां कन्यां ऋतुकालभयात् पिता ।
ऋतुमत्यां हि तिष्ठन्त्यां दोषः पितरमृच्छति ॥

वसिष्ठ १७श अध्याय ।

43. The father, fearing the approach of the *ritu* should give his

daughter in marriage when she is a *nagnika**[*i.e.*, before menstruation].
Vasishtha, Chap. XVII.

४४ । नग्निकान्तु वदेत् कन्यां यावन्नर्त्तुमती भवेत् ।
ऋतुमती त्वनग्निका तां प्रयच्छेत् तु नग्निकाम् ॥
गोभिलपुत्रकृत गृह्य संग्रह ।

44. A girl is called *nagnika* so long as she does not get the *ritu* she is no longer a *nagnika* when she gets the *ritu*. A *nagnika* should be given away in marriage.

४५ । सप्तसंवत्सरादूर्ध्वं विवाहः सार्ववर्णिकः ।
कन्यायाः शस्यते राजन्नन्यथा धर्मगर्हितः ॥
उद्वाहतत्त्वधृत स्मृति वचनम् ।

45. O king, the marriage of girls for all the *varnas* (castes,) after 7 years is to be commended; otherwise, it (*i.e.*, a deviation from this rule,) is opposed to religion.

Pandit Ráma Misra Sástri of Benares, whose pamphlet on Hindu marriage (*Udvahasamaya Mímánsá*) is supposed (though only erroneously) to countenance the present 'age of consent' Bill, himself says in the English preface to the pamphlet, "the principal age for marriage is that of twelve and upwards, as clearly declared by Manu, only it is necessary that the marriage ceremony should take place before the age of puberty is attained; 'that is before the commencement of menstruation)." Preface page I. He repeats himself on p. III "I entertain the hope that by means of this book people will come to know that marriage at the age of twelve or thirteen is not prohibited by the *Sástras* so long as it takes place before the period above indicated [*i. e*, the appearance of the catamenia]." In a passage in the body of the pamphlet he

* Professor Wilson in his Dictionary explains *nagnika* to mean a girl before menstruation or about 10 years old.

gives expression to the same opinion, supporting it by many of the texts quoted above.*

The following text in Süsruta a great medical authority says that impregnation ought not to take place in a girl who is under sixteen.

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* The following is a translation of the passage which occurs on pp. 40-41 :—We however say that the proper marriageable age for women is immediately before the time of *ritu* on the authority of the text, "the giving away [should take place] before *ritu*" in Gotama *Smriti* ; of the text of the Mahábhárata, "therefore before the appearance of menstruation, the father must give away his daughter in marriage only once ;" and of the repeated sayings of the great sages, "a *nagnika*" (a girl in whom menstruation has not appeared) to [be given in marriage to] a Brahmacheri (one leading a life of religions austerity in one's studentship." Therefore has Manu also in the 9th Chapter, "a father is culpable not giving away his daughter in marriage at the [proper] time [which has been interpreted to mean before *ritu*], the husband is culpable by not approaching his wife at [due] time [*i. e.*, at the time of *ritu*], and a son is culpable by not protecting his mother, her husband being dead" (verse 4), clearly spoken of the liability to reproach of a father not giving his daughter in marriage in time. This is exactly (to be seen) in other *smritis* also *e. g.* "Her (the girl's) giving away in marriage must be before *ritu* he who delays beyond that time is blame-worthy." Penances also are laid down for those who marry *Rajasvalás* (women in whom the menses have appeared) *e. g.* "The Brahmin intoxicated with passion who marries such a girl (a *rajasvalá*) is not fit to be spoken to, nor to be allowed to sit in the same line, such a Brahmin is a *Vrishalipati* ;" again. "The Brahmin who intoxicated with passion marries a *Vrishali*, (a girl who gets *ritu* before marriage) he is ever tainted with *sutaka* (the impurity of child-birth or miscarriage) and every day he is guilty of Brahmin-murder ; again, "the father of the numarried girl who gets the catamenia in her father's house is guilty of *Bhruna-hatyá* (murder of child in the womb) and she is called a *Vrishali* ;" again, "A girl who is a *nagnika* (*i. e.*, in whom the *ritu* has not made its appearance) should be given in marriage to a worthy *Brahmachári*, but a *rajasvalá* should not be prevented from being married to an unworthy man." In the science of astrology also the marriage of girls before *ritu* is enjoined as duty ; all this being plain enough no great pains need be taken on this point. This then [that a girl must be married before *ritu*] is the right opinion."

४६। ऊनषोड़शवर्षायां * अप्राप्तः पञ्चविंशतिम्।
यद्याधत्ते पुमान् गर्भं कुक्षिस्थः स विपद्यते॥
जातो वा न चिरं जीवेज्जीवेद्वा दुर्बलेन्द्रियः।
तस्मादत्यन्तबालायां गर्भाधानं न कारयेत्॥

सुश्रुत १०म अध्याय।

46. If a man who has not reached 25 causes impregnation in a girl under 16 then the offspring parishes in the womb; if born it does not live long, if it lives it becomes weak in body and mind. Therefore impregnation should not be caused in girls of very tender age.

The reconciliation of this text with the unquestionable principle laid down in all the *Dharmasástras* that a girl must be married before she gets the *ritu*, is effected by supposing that the author, if indeed he was a Hindu, for he is believed by some to have been of the Bauddha persuasion, there referred to cases where, owing to climatic or other conditions, girls did not get their *ritu* before sixteen.† There is a similar text in the Mahábhárata quoted by Raghunandan where it is said a man of 30 should take a wife of 16 but the text itself shows that the girl though 16 must be one who has not got the *ritu*. The text is as follows:—

४७। त्रिंशद्वर्षः षोड़शवर्षां भार्य्यां विन्देत नग्निकाम्।

47. A man of 30 should take a wife who is a *nagnika* of 16 years [the word *nagnika* meaning a girl who has not got the *ritu*, (*cp. nagnika anágatártavá*).

* Some read *ûnadwádasavarsháyám* (*in a girl under* 12) in place of *ûnashorasavarsháyám* (*in a girl under* 16) and this has the sanction of the commentary of Dallanacharyya.

† It is of some importance to note that this view of the true interpretation of this text of Susruta is taken by Pandit Ram Mistra Sastri in his pamphlet on Hindu marriage. The following is a translation of what he writes (p. 28) —"As it has been frequently declared both in the Dharmasástra and the Medical Sástras that the Menstrual blood like the (virile) semen should be made fruitful and as the menstrual blood can only be said to be made fruitful by impregnation, so by mentioning the age below 16 to be unfit for impregnation, it is to be understood that before that time the flowering (menstruation) also does not take place. Thus we are able to learn from

Whether however a reconciliation can be effected or not is not of much consequence, for the rule is absolute that when there is any discrepancy between the deliverances of *Dharmasástras* and *Arthasástras* the former is to be followed on this point the following texts may be cited :—

४८। स्मृत्यर्थेन विरोधे ह्यर्थशास्त्रस्य बाधनम् ।
परस्परविरोधे तु न्याययुक्तं प्रमाणवत् ॥

भविष्यपुराणवचनम् ।

48. In the case of opposition between a *Smriti* (*Dharmasástra*) and an *Arthasástra* (*i. e.*, a *Sástra* dealing with worldly matters, as politics, medicine, &c.) the *Arthasástra* must be given up. In the case of opposition between one *Smriti* and another *Smriti* and one *Arthasástra* and another *Arthasástra* that which is consonant to reason is valid (must be accepted).

Text of Bhavishyapurána.

४९। यत्र विप्रतिपत्तिः स्याद्धर्मशास्त्रार्थशास्त्रयोः ।
अर्थशास्त्रार्थमुत्सृज्य धर्मशास्त्रार्थमाचरेत ॥

व्यवहारतत्त्वधृतव्यासवचनम् ।

49. When there is any consideration between a *Dharmasástra* and an *Arthasástra*, give up the *Arthasástra* and follow the *Dharmasástra*.

Text of Vyása quoted in Vyávaharatattwa.

Marriage of girls, then, according to the *Sástras*, must take place before the appearance of the *ritu*, and *Garbhádhána* must be performed on the first appearance of the *ritu*. This is a positive injunction, what

Susruta that girls of 16 may also not get the *ritu*. Nor is the mistake to be made that this can not be correct as it is mentioned in the Sárirsthan of Susruta that girls get *ritu* from the 12th year. For this apparent contradiction can be easily reconciled by the consideration that the time of *ritu* varies in different countries [*under* different climatic condition]."

It may be mentioned that the Pandit gives a similar explanation of certain other texts. "In those places in the *Mahábhárata* and *Brahma Purána* where the age for marriage in the case of females is declared to be sixteen, eighteen, or twenty, this applies to former time—in former times women attained maturity later, and retained their vigour longer." Preface, pp. II—III.

is called in Sanskrit, a *Niyamabidhi* as opposed to *Parisankhyá*, in which latter there is no positive injunction in the form of "Thou shalt do this;" when the *Sástras*, lay down "*pancha panchanakháh bhakshyah*" [only five species of animals, having claws, may be eaten] they do not command you to eat the flesh of any five-clawed animal; all that they mean is, "if one wishes to eat the flesh of five clawed animals one may eat the flesh of only five specified species and not the flesh of the rest. If the injunction "*ritávupeyát*," ["approach your wife at the time of *ritu*], had been *parisankhya*, it would simply have meant—"If you desire to approach your wife, you may approach her at the time of *ritu*, but not at other times." But all the text writers and authoritative commentators take the injunction "*ritávupeyát*" as *Niyamabidhi*; that is, a positive or mandatory injunction in the form of "Thou shalt do this."*

This sort of injunction is distinguished from the other by having a sanction attached to it. If a *Niyamabidhi* is violated, the *Sástras* declare it to be a sin and lay down penalties for it. In the present case, the texts quoted above show that it is declared as a deadly sin; and that the penalties for the non-observance of the injunction are serious, including punishments both here and hereafter.

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* The following definition of a *Niyamabidhi* (or simply *Niyama*) occurring in a text of Siddhánta Bhatta Káriká of Mimánsa Darsana quoted in the Práyaschittatattwa, gives this particular case of intercourse at *ritu* by way of illustration:

५०। स्वरुच्या क्रियमाणे तु यत्रावश्यं क्रियाः कुचित् ।
चोद्यते नियमः सोऽत्र ऋतावभिगमो यथा ॥

50. If in cases where we might act according to our inclination, a certain act is made compulsory, that is called a *Niyama*, as intercourse at *ritu*.

It will be seen from some of the texts quoted above that the penance prescribed for non-observance of *Garbhádhána* is *krichchhrárddha*, *i. e.*, half the penance named *krichchhra*. In *krichchhra* one has to observe a fast of 12 days according to certain rules. In *krichchhrarddha* therefore a fast has to be observed for six days. The rules to be followed in the observance of the fast are given in the following text.

५१ । सायं प्रातस्तथैकैकं दिनद्वयमयाचितम् ।
दिनद्वयञ्च नाश्नीयात् कृच्छ्रार्द्धः सोऽभिधीयते ॥
प्रायश्चित्तविवेकधृत आपस्तम्बवचनम् ।

51. That penance is called *krichchhrarddha* where one must not eat in the morning of one day and on the evening of another where he shall not eat at all unless asked on two days and where he shall not eat at all on two other days (of six consecutive days).

The fine in commutation* of the penance is a *káhan* and a half of Kowrie or about a quarter of a rupee in present money. It has been argued from the lightness of the fine that the sin of omitting to perform the *Garbhádhána* can not be regarded as great and that the prevention of it by statute in certain cases can not therefore be a serious interference with the Hindu religion. The argument is not of any value. When an act or omission is a sin it is a sin, whether the fine provided for its punishment in this world is light or heavy, and no one, who believes that it is a sin, ought to be compelled to be guilty of it. It may also be mentioned that the heinousness of an act or omission is not always measured, at least at the present day, by the fine provided for it. The punishment prescribed for drinking wine is incomparably severer than that for eating beef, but the latter at the present day is usually

* The commutation, however, can only be allowed in cases where offenders are really unable to perform the penance itself. One able to perform the penance cannot get off by the payment of the fine in commutation of the penance.

considered the incomparably more heinous offence. Besides no penance (or fine in commutation of penance) for a sin can be efficacious, unless it is accompanied by a resolution not to commit the sin again,* which in the present case is impossible, for the sin will have to be committed month by month for some time. Indeed to ask a devout Hindu—(and let it not be imagined that even in these days of unbelief the number of devout Hindus is inconsiderable)—to commit a sin on the ground that it is easy to expiate it by a fine, is about as reasonable as to ask a devout Christian to commit a sin on the ground that one sin more or less does not signify, since the Divine Sacrifice is sufficient to atone for all sins, past, present and future.

Some, while admitting that *Garbhádhána* is an observance enjoined in the *Sástras*, contend that it need not be observed at the very first *ritu* but that it may be postponed to any subsequent one. If this could be done, the religious objection against the bill would obviously lose some of its force. But according to the *Sástras* and custom based on *Sástras* this can not be done. It will be seen that in some of the texts quoted above the word *first ritu* is expressly mentioned. In others though the word *first* is not expressly used it is evidently implied; for as has been already remarked, there is nothing in them to exclude the *first ritu* from the operation of the general rule. A strong reason also why the *first ritu* should not be excluded is to be found in the solicitude which the Hindu religion

* In this connexion the texts of Manu XI. 230, 232 (Mandlik's edition pp. 1458, 1459) may be consulted. The following is Dr. Burnell's translation of the texts (where the texts, however, as in some other Sanskrit editions of Manu, are numbered 231 & 233).

"For (by) repenting (after) committing a sin one is released from that sin and he is purified by desisting (from the sin) with the words, "I will not act thus again."

"When one has committed, either unwittingly or wittingly a forbidden act, and desires release from it let him not perform a second (like it)." p. 358.

manifests, at every turn, for the begetting of a son. It is only by begetting a son that the debt due to one's ancestors can be repaid and provision can be made for the due performance of the all important funeral rites, the offering of oblations and *Pindas* &c. Seeing that life is fleeting a Hindu must not miss the very first opportunity of begetting a son. The marriage of girls before puberty is also partly, though not wholly, due to this consideration, so that women also may have as early an opportunity as possible of becoming mothers of sons. All this may seem extremely puerile to the European, but this is undeniably the very life-blood of the Hindu religion.

The intention of the *Sástras* that a husband must approach his wife at each *ritu* before a son is born being indisputable, some have attempted to elude the obvious application of the rule to the first *ritu*, by contending that the word *ritu* is not equivalent to menstruation, that it has been explained by Hindu commentators to mean the condition when a woman is physically fit for pregnancy, and as this condition can not be said properly to occur before a girl is 12 years old, the appearance of mere menstruation before that age is not *ritu* in the proper sense of the word. But the word *ritu* is certainly used, both in popular and technical language, in the sense of the appearance of menstruation or the time when it appears. It is true that Medhatithi and other commentators explain the term to mean the physical condition of being capable of impregnation, but this is only because the time when the catamenia appears in women is considered, and justly considered even according to European physiology, to be the time when women become capable of being impregnated. This is evident from the following definition of *ritu* given by Medhatithi in his commentary on Manu III. 45. (vol. I. p. 307—Mandlik's Edition)

५२। "ऋतुर्नाम स्त्रीणां शोणितदर्शनोपलक्षितशरीरावस्था विशेषो गर्भग्रहणसमर्थः काल उच्यते।"

52. *Ritu* is a certain condition of body in women known by the appearance of (menstrual) blood which is the time (when they are) capable of receiving impregnation.

By such definitions the Hindu commentators of *Dharmasástras* never meant that the appearance of the catamenia in a girl, say, of eleven years and six months old was not properly to be considered as *ritu.* Indeed the meaning of the word is so firmly established in the sense of the catamenia in ordinary usage, and so many girls really become mothers before 12, that an attempt to explain away the obvious meaning of the texts of the *Sástras* by giving a forced meaning on the word, does not deserve to be called better than a mere verbal quibble.

Here it may be remarked that though the observance of *Garbhádhána* has been proved above to be a ceremony enjoined by the *Sástras*, it is not necessary to do so to show that it is a religious observance. The real religious beliefs of a people are not to be found so much in their sacred writings as in what they really believe and practice as religion. If owing to new conditions of life or other causes there is a change in the religious beliefs and practices of a people, their scriptures are usually so explained by commentators as to suit the new beliefs and practices. The ascertainment of the real meaning of the scriptures, when they were first composed, may be, and certainly is, a most interesting and profitable study from the historian's point of view but the received interpretation of the scriptures must be resorted to, to ascertain the real religious beliefs of a people. It is evident therefore that even if scholars of the new European school of criticism, should be able to discover that the ancient Hindu scriptures did not originally countenance early marriage or sexual

connection at the first appearance of the *ritu*, that would not make the beliefs and practices at present obtaining in these matters among the Hindus, and which are supported by authoritative modern commentators, any the less religious beliefs and practices; so that for Government to undertake reformation of these beliefs and practices by coercive legislation, would be a violation of the liberty of conscience of the people as also of the solemn pledges given them by Acts of Parliament and the Proclamation of Her Gracious Majesty of 1858. Since that time the Indian Government has strictly respected those pledges and adhered to the wise policy of non-interference in the customs of the people, so much so that when the great reformer, the venerable Pándit Iswara Chandra Vidyáságar conclusively demonstrated that the pernicious custom of polygamy, as it obtained among certain classes in this country, was outrageously opposed to the *Sástras*, and Government was moved to pass a Bill so to regulate this custom as to make it conform to the *Sástras* (which countenance it only in certain specified cases, as when the wife has some incurable disease like leprosy &c.), Government did not think it right to interfere. To pass the present Bill would be a wide departure from the policy hitherto followed.

To sum up:—The ceremony of *Garbhádhána* is customary at least in some parts of India. This custom, unless it can conclusively be shown to be opposed to the *Sástras* is binding on all Hindus where the custom is in vogue; that this custom is really based upon the Hindu Sacred Scriptures, the Vedas, the Smritis and the Puránas; that some of the texts quoted denounce in strong language, and under severe penalties, the husband who does not approach his wife at each *ritu*, so that even in parts of the country where the ceremonial part of the *Garbhádhána* is not in vogue, its other part (*viz.* intercourse between husband and wife) is still obliga-

tory; that marriage of girls according to Hindu *Sástras* must be before *ritu* and that this is maintained by Pandit Srirám Sástri of Benares, (who is said to have given his countenance to "the age of the consent" Bill), in his pamphlet on the age of marriage; that whether the discrepancy between the text of Susruta, laying down 16 years and the texts of *Dharmasástras* laying down the appearance of the *ritu* as the proper age for conception, can be reconciled or not (Pandit Ráma Misra Sástri has attempted to reconcile them by the supposition that the 16 years age has reference to some particular part of the country where the age of puberty through climatic causes is delayed), the rule is absolute that in the case of such discrepancies the *Dharmasástras* must prevail; that the injunctions in the *Sástras* regarding *Garbhádhána* are positive injunctions known as *Niyamabidhi* and that their non-observance entails penance; that the comparative lightness of the fine to which the penance may be commuted can not be regarded as taking away from the obligatory character of the injunction, a sin being a sin, whether the punishment provided for it is great or small; that the begetting of a son being an all important thing in the life of a Hindu from the religious point of view, the *Sástras* cannot but mean that the very first opportunity of doing so should not be missed; that the attempt to explain away the obvious meaning of the *Sástras* by taking the word *ritu* in a sense different from the received meaning of the word, is only a verbal quibble; and lastly that even if modern critical scholarship could prove that the Hindu scriptures gave no countenance to the ceremony of *Garbhádhána* as observed—in Bengal at any rate—at the present day, the ceremony, supported as it is by modern commentators of authority, would still remain a religious ceremony which the Government could not abolish, in cases where girls get the *ritu* before 12, by coercive legislation without violating the solemn pledges given to the people and hitherto strictly respected.

ADDITIONAL NOTE.

If Lord Lansdowne and Sir Andrew Scoble had adopted the attitude which the Hon'ble Mr. Telang advocates, in the following passage of his letter to the Bombay Gazette of the 7th instant, "I hold that it is the bounden duty of the Legislature to do what it is now doing, in the interests of humanity and of the worldly progress of the communities committed to its charge, and for such a purpose as the present to disregard, if need be, the Hindu Sástras"—if Mr. Telang's attitude had been the attitude of the responsible head of the India Government and the Legal Member of the Viceregal Council, the discussion as to whether the present Bill would, if passed into law, be an interference with Hindu Religion would not have been of much consequence. In that case it would have been necessary to dwell on the other strong objections against the bill, namely that it would only be an irritating interference with the social customs of the people, without producing almost any good and bringing innumerable evils in its train,—objections some of which have been so ably set forth in the notes of Dr. Rajendra Lal Mitra, Babu Jogindra Chunder Ghose, Mr. Monmohun Ghose and others. As however both the Viceroy and the Law Member have emphatically disclaimed any intention of interfering with the Hindu Religion, it behoves all Hindus to try and convince them that the Bill *does* violence to their religion and religious customs. Hence the necessity of continuing a discussion which, one cannot but feel, is not at all an agreeable one.

Many able apologists of the measure have endeavoured to show that the Bill is perfectly innocuous from the point of view of Hindu Religion. But none of them have been able to say that the custom of *Garbhá-*

dhána does not exist, that it is not the custom to observe the ceremony of which coition of husband and wife is the more important part, at the first appearance of the *ritu*, that the *ritu* in the case of many girls does appear before 12 or, failing to ignore these palpable facts, to prove that these customs are directly opposed to the Hindu Sástras. All that they have hitherto done in this direction is to attempt to show that the ceremony of *Garbhádhána* at the very first appearance of the *ritu* is not enjoined as absolutely necessary in all the Scriptures, that certain texts have been discovered to prove that the ceremony might be postponed in certain cases, that some ancient medical texts disapprove of impregnation in girls under 16 and so forth. Now with whatever ability and scholarship all this may be urged it does not really touch the question. To condemn a religious custom and maintain that it may be abolished by the legislature nothing short of a complete proof that it is opposed to the spirit and letter of the *Sástras*, would be sufficient. And this proof is far from forthcoming.

Nevertheless it is desirable to examine the more important of the arguments adduced by the supporters of the Bill, to prove that it would do no violence to Hindu Religion.

The first place among these supporters must be given to the Hon'ble Mr. Telang from the high position which he occupies. He has himself summarised his arguments in the concluding paragraph of his letter to the *Bombay Gazette* already referred to. We shall take them up one after another using the very words of his own summary.

(1) "The legislature is not bound hand and foot by the authority of the Modern authors of digests. Even the courts do not hold themselves so bound, and *a fortiori* the Legislature ought not to do so."

To this it will be enough to say in reply that the legislature are not indeed bound *hand and foot*, but it requires the very clearest proof indeed, that the authors of modern digests have gone contrary to the *Sástras*, to enable the legislature to over-ride their authority. This clear proof, as has already been said, is not forthcoming in the present case; whereas, on the other hand it has been proved by innumerable texts that the authors of the digests have in this matter only given a real digest of the texts of the *Sástras* bearing on this point. It is extremely doubtful if the "*a fortiori*" in Mr. Telang's argument has any force. What may be proper for the Courts to do may not always be proper for the legislature. The process of gradual change in the laws of this country by judicial decisions is not liable to many of the objections to which direct legislative interference is liable.

(2) "The *Dharma Sindhu's* reference to malice, &c., towards the wife, and to the passage in the *Bhágabata* about these matters not being matters for Scriptural 'command' show [shows?] that we have not here to deal with any real "injunction" of the *Sástras*; and that this is, in truth, a case of what our *Mímánsá* writers call a *parisankhyá*."

The authority of *Dharmasindhu* (which is also a digest) even though it is backed up by the authority of a commentator of a *Purána* could not certainly outweigh a hundred authorities all emphatically declaring that the rule "approach your wife at *ritu*" is a *niyama* and not a *parisankhyá*. But the *Dharmasindhu* does not really go contrary to the received interpretation, as the following extract from its text will show.

५३ । ऋतौ तु गमनमावश्यकं अन्यथा भ्रूणहत्या दोषः विरक्तस्य

...... तु न कोऽपि दोषः ।

53. To approach the wife at *ritu* however is necessary; otherwise there is the sin of *Bhrunahatyá* (Murder of child in the womb) for him however who is *Virakta, i.e.*, who has renounced his attachment to worldly objects, it is no sin.

That the text of the *Bhágavata* does not really give any support to the contention of Mr. Telang, will be evident from the text itself.

५४ । लोके व्यवयामिषमद्यसेवा
नित्यास्तु जन्तोर्न हि तत्र चोदना ।
व्यवस्थिति स्तेषु विवाहयज्ञ
सुराग्रहै रासु निवृत्तिरिष्टा ॥

श्रीमद्भागवत ११।५।११ ।

54. In this world indulgence of animals in sexual pleasure, fish and meat and wine is natural [*Nitya i. e.* all invariably have these appetites]. No injunction (is needed) in these things. Their regulation is by [the ordinances of] marriage and particular religious sacrifices (in which meat and wine have to be taken). [The lawlessness of appetite is regulated by the institutions of marriage and religious sacrifices]. The renunciation of these is desirable.

Now the scope and aim of this verse would leave no doubt in the mind of any candid reader that it has no connection whatever with the character of the injunction we are now considering. The *Bhágavata* preaches the duty of renunciation, of withdrawing one's self from worldly things; all its injunctions can not and ought not to be followed by the *house-holder*, one who has not yet renounced the world. This verse of the *Bhágavata* may indeed be fitly compared with the following well known text of Manu himself.

५५ । न मांसभक्षणे दोषो न मद्ये न च मैथुने ।
प्रवृत्तिरेषा भूतानां निवृत्तिस्तु महाफला ॥

मनु ५।५६ ।

55. There is no sin in eating meat or in drinking, or in sexual pleasure; this is the inclination [natural appetite] of animals; but renunciation is of great merit.

Manu V. 56.

No one can possibly contend that this text of Manu militates against his own text ऋतु कालाभिगामी-स्यात् "Approach your wife at *ritu.*"

It is true that Srídhara Swámí in his commentary on this verse, has endeavoured to show that the injunction of approaching wife at *ritu* is a *parisankhyá* and not a *niyama.* But the authority of a commentator and specially of a commentator of the *Bhágavata* can not be held to set at naught that of a hundred authorities; all unanimously declaring that the rule is a *niyama* and not a *parisankhyá.* As already stated in the Addendum a *niyama* is distinguished from a *parisankhyá* by having a sanction attached to it; now this injunction *has* a sanction, which it could never have if it had been a *parisankhyá.* Whether the punishment provided for the violation of this rule is great or small, there *is* a punishment, and that alone ought to be conclusive on the point that it is not a *parisankhyá* but a *niyama.*

(3) "In Mádhava's gloss on Parásara he treats near at hand to be an "indicative" phrase and to stand for "in good health," &c. &c."

Now Madhava is perfectly right in this interpretation; the word *sannidhau* "at hand" in the text quoted at p. 9 No. 24 *is* "indicative." It includes the presence of those other causes the absence of which would incapacitate a man from approaching his wife at *ritu,* such as "being in good health," being free, *i. e.,* not in prison; the *Sástras* have made an exception in the favour of those who cannot approach their wives in consequence of these incapacities; *viz.,* absence and illness. No other cases are mentioned

(imprisonment coming really under absence). But supposing that there are other exceptional cases, the rule amounts to this that except in the case of these incapacitating circumstances mentioned in the *Sástras*, a man commits a sin in not approaching his wife at *ritu*. In the text in question one exception is directly indicated namely that of absence which includes *pravása* (living abroad) and *bandhana* (imprisonment). The commentator very properly adds, in effect, that there is another exception namely where one is ill. The authors of the *Sástras* when they made the rule, made exceptions in the obvious cases of incapacity arising from absence and illness. To argue from the fact of there being these exceptions that the rule is not of a binding character and that one is entitled to break it just as he pleases, is not at all warranted. In Sanskrit grammar exceptions to general rules are numerous. Is a sanskrit writer therefore entitled to violate the general rules? In fact these exceptions are exactly exceptions of that character that prove a rule.

Since the Hon'ble Mr. Telang has referred to Parásara-Mádhava the following extract from that work may here be fitly given.

५६। तस्मिन् ऋतौ पर्व्वाणि आद्याश्चतस्रोऽ।श्चौर्व्वर्ज्जयित्वा युग्मासु समासु षष्ठीप्रभृतिषु गच्छेत् पुत्रार्थम्। अयुग्मासु स्त्रीजन्मभयात् अगमनं नतु प्रतिषेधात्। ऋतुकालाभिगामीस्यात् इत्यत्र नियमद्वयं वेदितव्यम्। ऋतौ गच्छेदेव न तु वर्ज्जयेत् इत्येको मियमः ऋतावेव गच्छेन्नानृतौ इत्यपरः* अतएव देवलः।

* It may be noted that there is an admitted difference of opinion on this point. Some maintain that it is not a sin to approach one's wife at other

स्वयं दारा ऋतुस्नातान् स्वस्थश्चेन्नोपगच्छति ।
भ्रूणहत्या मवाप्नोति गर्भं प्राप्तं विनाशयेत् ॥

बौधायनोऽपि

त्रीणिवर्षाण्यृतुमतीं यो भार्यां नोपगच्छति ।
सतुल्यं भ्रूणहत्याया दोषमृच्छत्यसंशयम् ॥
ऋतौ नोपैति यो भार्यामनृतौयश्चगच्छति ।
तुल्यमाहुस्तयोः पापमयोनौ यश्च सिञ्चति ॥

पराशर माधव २य: आं कां
(सोसाइटी मुद्रित पुस्तक पृ ४९८

56. In that *ritu* omitting certain lunar days known as *parva* and the first four nights, on the even lunar days like *shashthi* (the sixth day of the moon), &c., approach (the wife) for (the birth of) a son. The rule to approach on *even* days is because of the fear of giving birth to a daughter [intercourse on odd days is supposed to give birth to daughter; *vide* in this connexion Manu III. 48], not because of prohibition [the odd days are not actually prohibited but on those days daughters only are given birth to.]

"Approach your wife at *ritu*," in this, it is to be known there are two *Niyamas* (mandatory injunctions) approach your wife at *ritu*, never omit to do it; this is one *Niyama*; approach at the time of *ritu*, but never [approach] at other times, this is the other *Niyama** Hence Devala (lays down):—He who being in health does not approach his wife, after her ablution at *ritu*, incurs (the sin of) *Bhruna-hatyá* (Murder of child in the womb) and destroys conception arrived. Baudháyana also (lays down):—He who does not approach his

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times than *ritu*, at least at the desire of the wife. On this point the text of Vyása quoted on p. 9 of the Addendum (No. 25) and the second half of a text of Skanda Purána, the first half of which has been quoted on p. 12 of the Addendum (No. 35) viz:—

५७। स्त्रीणां वरमनुस्मृत्य यथाकामस्यथवा भवेत् ॥

57. "Or approach the wife at pleasure (*i. e.*, at her desire) remembering the boon obtained by women [from Indra, to the effect that they might have sexual connection with their husbands so long as a son is not born unto them]" may be referred to.

wife at *ritu* for three years, he undoubtedly incurs the taint equal to that of *Bhrunahatyá* (murder of child in the womb). He who does not approach his wife at *ritu*, and he who approaches at other times than *ritu*, the sin of these two is equal as also of him who makes seminal effusion any where else than in the female reproductive organ.

Parásara-Mádhava Chapt. II.
(Bibliothica Indica Edition, p. 498.)

The Hon'ble Mr. Telang's "no less an authority than Mádhava" here distinctly states that the rule ऋतु कालाभिगामीस्यात् is a *niyama* ऋतौ गच्छेदेव नतु वर्ज्जयेत् "approach [your wife] at *ritu*," *never* omit to do it).

It may here be mentioned that the text of Baudháyana quoted by Mádhava in the above extract, has by some supporters of the Bill, been adduced to prove that a husband may refrain from approaching his wife at *ritu* for a period short of three years, as the sage has laid down that if one does not approach his wife at *ritu* for three years (त्रीणि वर्षाणि) then he is guilty of *bhrúnahatyá*. All that can be fairly inferred from the text, however is that the sage thought that the sin of omission to approach the wife for a lesser period was less heinous than *bhrunahatyá*. Indeed two verses that follow this text in Baudháyana leave no doubt on the point, that the sage can not possibly have meant that there is no sin in not approaching the wife at *ritu* for three years after marriage. One of these two verses has been already quoted before (vide Addendum p. 11, No. 32). The other verse is as follows:—

५८। ऋतौ नोपैति यो भार्य्यां नियतां ब्रह्मचारिणीम्।
नियमातिक्रमात्तस्य प्राणायामशतं स्मृतम्॥

58. He who does not approach his wife at *ritu* who has been leading a life of ascetic purity,—for his violation of the *Niyama* [the

injunction of approaching wife at *ritu*] the penance prescribed is a hundred *pránáyámas.*

In the Práyaschitta Viveka the comparative lightness of the penance laid down in this verse [*viz.*, only a hundred *pránáyámas*] has been accounted for by the supposition that it contemplates only such cases where the omission is not wilful but is unwittingly made (*ajnánakrita*).

In the verse that precedes the last verse (No. 32 given on p. 11) it is laid down that when a husband being at hand omits to approach his wife, his ancestors throughout that month lies in that catamenial discharge. And lastly in the verse in question a man is held guilty of *bhrunahatyá* if he omits to approach his wife at *ritu* for three years. It is evident taking the three verses together that Baudháyana meant some such thing as to mark the gravity of the offence, according as it was performed wittingly or unwittingly, for a longer or a shorter period, by the comparative lightness or severity of the penance.*

(4) "The trumpery character of the penance prescribed for the "sin" here in question shows that we have not here to deal with a real command."

This argument, since argument it must be called when a man of the Hon'ble Mr. Telang's position has thought it fit to bring it forward, can not be considered to have any force when it is remembered that the mere provision of a penance, irrespective of its severity is sufficient to make an injunction a mandatory one; that the penance is in reality not very light; that a *krichchhrárdha* which is the ordinary penance for this "sin" is a very difficult affair (vide p. 22 of the Addendum); that the penance has to be doubled when the omission is wittingly made, an affair

* Vide also some remarks made below (p. 47.)

much more difficult; that the sin being regarded as a *upapátaka* the penance for it has to be repeated as often as the sin is committed, which, in the present case, may have to be committed month after month for a long time; that the commutation of the penance to fine can only be made in the case of a person who is really incapapble of performing the penance itself, and that even in the case of commutation certain purificatory acts as fasting, shaving of the head, taking of cow-dung &c., have to be performed.

(5) A mere trifling penance being prescribed for the washing away of the mere "legal fiction of a sin" there is no difficulty about the orthodox obeying British law and the *Sástras* at the same time."

This argument does not require any answer; for it has been shown that the penance is not trifling and that the omission in question is not a "legal fiction of a sin," but that it is considered a real sin which requires penances to wipe out. For those who have no real faith in the *Sástras* but who only outwardly conform to their injunctions where they can not help, the reconciliation suggested by the Hon'ble Mr. Telang is obvious; but it is far otherwise with those who still have devout faith in their religion and think that with the abolition of the sacrament in question the spiritual purity of the race will disappear. The Bill, if it became law, would place these devout men in a serious dilemma; and it is not too much to say that many will be found stiff-necked enough to risk jail rather than wilfully violate an injunction of the *Sástras*.

(6) The Hon'ble Mr. Telang has hinted that if the Bill became law, the law would supersede the *Sástras* in this matter; "the law would be the command of the sovereign which by the Hindu Scriptures must be implicitly obeyed."

Had not Mr. Telang himself qualified the argument by the words "for what it may be worth" in

connection with this argument, it would have been necessary to meet it fully. As it is, it is enough to say that according to the Hindu Scriptures, only such orders of the sovereign have to be obeyed as are not opposed to the injunctions of their *Sástras*. Here is a text from *Yájnavalkya* with the commentary on it by Vijnáneswar in his *Mitákshará*:—

५९। निजधर्म्माविरोधेन यस्तु सामयिको भवेत्।
सोऽपि यत्नेन संरक्ष्यो धर्म्मो राजकृतश्च यः॥

याज्ञवल्क्यवचनम्।

श्रौत स्मार्त धर्म्मानुपमर्द्दनेन समयान्निष्पन्नो यो धर्म्मो गोप्रचारोदक रक्षण देवगृहपालनादिरूपः सोऽपि यत्नेन पालनीयः। तथाराज्ञा च निज धर्म्माविरोधेनैव य सामयिको धर्म्मो यावत् पथिकं भोजनं देयमस्मद्‌राति मण्डलन्तु रगादयो न प्रस्थापनीयाः इत्येवं रूपं कृतः सोऽपि रक्षणीयः।

मिताक्षरा व्यवहाराध्याय।

59. The duty, not being opposed to one's religion, which is imposed by convention or by the sovereign should be carefully observed.

Text of Yajnabalkya.

That duty which is derived from convention if it does not clash with the religion laid down in the Vedas and Smritis, the duty for instance of the preservation of commons (for the grazing of cattle), of water (tanks and other reservoirs of water) and the maintenance (in due repair) of temples, this duty should be carefully observed. Again the duty laid down by the sovereign, not being opposed to one's religion, the duty for example that food should be given to as many wayfarers [as may come ?] horses, &c., should not be sent to our [the sovereign's] enemies, such duty also should be carefully observed.

From this text it is clear that it is not one's duty, according to the *Sástras*, to obey a law made by the sovereign, if that law should clash with one's

religion. It is also evident that it would be vain to urge that when the *Sástras* recognize certain incapacitating circumstances, as illness and absence, which exempt one from the operation of the general rule, a law made by the sovereign making the act penal in certain cases, would also operate as an excepting circumstance. The principle in fact is clearly established in the *Sástras* that a sin, committed under compulsion, is not the less a sin. Penances for example are prescribed for the offence of eating beef, &c., when forced to do so by Mlechchhas.*

The position therefore that if the present Bill, became law, it would operate as illness and absence to excuse the omission of the duty to approach one's wife at *ritu*, is not at all tenable; it is directly contrary both to the letter and the spirit of the *Sástrás*.

In examining the Hon'ble Mr. Telang's arguments all the important arguments adduced by the supporters of the Bill have been examined. It will therefore not be necessary to examine in detail all the arguments of other supporters of the Bill. It will be enough to notice only some of the more or less plausible ones among them.

६१। कन्या द्वादश वर्षाणि याप्रदत्ता गृहे वसेत्।

ब्रह्महत्या पितुस्तस्या सा कन्या वरयेत् स्वयं॥

61. (1) A girl who stays in her father's house twelve years without being given in marriage,—her father incurs the sin of *Brahmahatyá* (murder of a Brahmin). That girl may take a bridegroom herself.

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* Compare the texts of Devala quoted in the Práyaschitta Viveka.

६०। दासीकृतवलाम्लेच्छै श्चाण्डालाद्यैश्च दस्युभिः।

अशुभं कारितं कर्म्म गवादिः प्राणिहिंसनम्॥

This text of Yama implies that marriage itself of girls may be deferred till they are 12 years old and when marriage itself can be deferred, the consummation of marriage may also be deferred till the girl is 12.

The obvious answer is that the text itself shows that the marriage of girls till 12 is looked upon with great disfavour, for fear that the girl might any day get the *ritu*; for the position is incontestable that marriage of girls should take place before they get the *ritu*; so that when 12 years is mentioned, a hard and fast limit of age is not intended; but only an approximate limit when the *ritu* may be expected to appear among them.

(2) The word *ritu* in the *Dharmaśástras* is a technical term, which does not simply mean the catamenia but " a fit condition for pregnancy " which can not be said to be reached before 12.

This argument has been met in part before (*vide* Addendum p. 2, 4 and 25) and it will be enough to add here that the term in question as a technical term does not mean the catamenia itself but the whole period (of 16 days) indicated by the appearance of the catamenia. In this sense only is it a technical term but not in the sense that the mere appearance of the catamenia unaccompanied by fitness for pregnancy is not *ritu*. The appearance of the catamenia itself is the conclusive proof of the fitness for pregnancy. To ascertain this fitness, a medical examination is not required. That girls do become pregnant at *ritu* when it appears even before 12 is the best proof that *ritu* itself is evidence of fitness for pregnancy. Besides how can it be contended that a girl is fit for pregnancy when she is 12 years and one month old and not fit when she is 11 years and 11 months old. A hard and fast rule of age to ascertain whether a

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... आघ्रोषिते द्विजातौ च प्राजापत्यं विशोधनम् ॥

girl is fit for pregnancy or not is hardly common sense.*

(3) No penance is laid down in the *Sástras* for non-performance of the ceremony of *Garbhádhána*, though penance is laid down for not approaching the wife at *ritu*. Hence the ceremony can not be called *nitya* or obligatory.

All the *sanskárs* (the sacramental ceremonies) including that of *Garbhádhána* have repeatedly been described as *Nitya-karmas* obligatory duties and a general penance is laid down for the non-perfomance of all *nitya-karmas* though especial penances are also sometimes provided for especial *nitya-karmas*.

As a general penance provided for the non-performance of *nitya-karmas* we may quote the following text.

६२ । वेदोदितानां नित्यानां कर्म्मणां समतिक्रमे ।
स्नातकव्रत लोपे च प्रायश्चित्तमभोजनम् ॥

62. In the non-performance of *nitya-karma* mentioned in the Vedas and in the violation of the duty of the householder the *práyaschita* is fasting.

In the case of *Garbhádhána* especial penances have been laid down for its non-performance. Here is one text from the *Nirnaya Sindhu* :—

६३ । गर्भाधाने होमाद्यकरणात् प्रायश्चित्तमाह
अकृत्वा गां द्विजे दत्वा कुर्य्यात् पुंसवनं पतिः ॥

63. In the non-performance of *homa* and the other sacrificial rites in the ceremony of *Garbhádhána* the (following) penance is laid down.

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* In cases of abnormally early appearance of the catamenia this interpretation of the word *ritu* might be of some avail, but it cannot be of any avail, when a girl gets the *ritu* at the usual age that is after 10 which has been laid down in the *Sástras* as the age when a girl should be called *rajasvalá* even if she may not actually have got the *ritu*, for at that age the *ritu* may be expected to appear any day.

Not performing (the ceremony) the husband making the present of a cow to a Brahmin, must perform the ceremeny of *Punsavana* (a ceremony which has to be performed in the third month of pregnancy.)

The following text, also from the Nirnaya Sindhu,

६४। "गर्भाधानस्याकरणात् तज्जातस्तु दुष्यति ।

64. In consequence of the non-performance of *Garbhádhána*, the son begotten is born with a taint."

leaves no doubt that the non-performance of *Garbhádhána* was looked upon as a grave omission entailing the serious consequence of tainting the offspring.

But it is a great mistake to suppose that the approaching the wife at *ritu*, is not an essential part of *Garbhádhána*. In some of the older authorities the ceremony itself is not insisted upon, but the approaching the wife, is made obligatory. So that when penances are laid down for omission to approach the wife at *ritu*—that is for omission of that part of *Garbhádhána* with which the present Bill, if passed into law, would interfere, for the law would not touch the mere ceremonial part of *Garbhádhána*—it cannot for the purposes of this controversy be of the smallest consequence, whether especial penances are laid down or not for the omission to perform the ceremonial part of *Garbhádhána*.

(4) Texts like "*Garbhasya sphutatajnane*," show that *Garbhádhána* is to be performed when the *womb* is properly developed and not when the *ritu* appears.

The word *garbha* in these texts (which are quoted in Addendum p. 7 and 10) are traditionally explained as meaning *ritu*. But even if it meant the *womb* and not *ritu*, it would not be of much avail, for

as already shown (in answer to argument 3) the appearance of the *ritu* is the certain indication of the development of the womb.

(5) The text of Yama given above "*Kanyá dwádasa varsháni, &c.*," and the text of Manu "*trinsat varsho vahet kanyam, &c.*, (quoted on p. 13 of the Addendum No. 36) lay down 12 as the marriageable age of girls. The texts of the *Sástras*, in which the father is said to incur sin by not giving his daughter in marriage before *ritu*, must be read with these texts of Yama and Manu, so that their meaning would be that no sin is incurred by not marrying a daughter before 12, even if she gets the *ritu* in the meantime.

This interpretation of the texts of Yama and Manu (quoted on p. 16 No. 42 and p. 13 No. 36) is as contrary to the letter and spirit of the *Sástras* as it is possible for any interpretation to be, not to say that it is absurd on the face of it.

The correct interpretation of both the texts has been given before. The age of 12 cannot be regarded as the obligatory age of marriage; it is used only as illustration to show, *firstly* that the marriage of girls ought to take place before the *ritu*, 12 being the age about which time, (sometimes before, but usually after) the *ritu* usually appears, and *secondly* (in the case of the text of Manu alone) that the girl should be about a third as old as her husband, the second half of Manu's text leaving no doubt whatever on the point that 12 is not the obligatory age; for it speaks of a man of 24 marrying a girl of 8. The *Sástras* laying down most distinctly that a girl ought to be married before *ritu*, a father would certainly be liable to sin if he does not marry his daughter before 12, in case she gets the *ritu* before that age: just as the husband would be liable to sin by not approaching her at *ritu*.

(6) A passage in the commentary of *Medhatithi* on Manu's text (quoted on p. 7 No. 14) has been considered as supplying a crushing argument to the position that a husband must approach his wife

at the very first *ritu*. The passage is as follows :—

६५। उक्तो विवाहः। तस्मिन्निवृत्ते समुपयाते दारत्वे तदहरेव स्वेच्छयोपगमने प्राप्ते तन्निवृत्त्यर्थमिदमारभ्यते। न विवाहसमनन्तरं तदहरेव गच्छेत् किं तर्हि ऋतुकालं प्रतीक्षेत। गृह्यकारैस्तु अत ऊर्द्धमक्षारलवणाशिनौ ब्रह्मचारिणावधःशायिनौ स्यातां त्रिरात्रं द्वादश रात्रं संवत्सरं वेति पठितम्। तत्र सत्यपि संवत्सरस्यान्तरा पतित ऋतौ गमनं नास्ति। एवं अस्मात् कालादूर्द्धमसत्यृतौ गमनं नास्ति। एवमेते स्मृती अविरोधिन्यौ भवतः।

65. "The law relating to marriage has been dealt with. The relationship of husband and wife being complete after the ceremonies, the natural inclination of the parties, unless restrained by the *Sástras*, might lead them to consummate at once. Hence the prohibitory injunction contained in the text. The meaning of it is that sexual connection should not commence from the day of marriage, but the parties must wait till the occurrence of a certain event. In the treatises on rituals, it is laid down that after the marriage ceremonies, the married couple must observe the practice of a *Brahmachári*, and abstain from sexual intercourse, and luxurious food, for a certain period, which may extend from three days to one year. [(more accurately) for 3 nights or 12 nights or a whole year]. This must be reconciled with the above text by holding, that if *a certain event takes place within one year, the parties shall not have sexual intercourse within the period.* It must also be held that the parties should wait till the happening of a certain event if it did not take place within the year. By this interpretation all inconsistency between the different Smritis is avoided.*

To the arguments based on this passage it will be enough to reply :—

* The rendering is taken from the paper of Dr. Jogindra Nath Bhattácharya in the Reis and Rayyet of January 31, 1891. Though not a close translation, it gives the meaning of Medhatithi pretty clearly. (The Italics are Dr. Jogindra Nath's)

I. That, Medhatithi himself does not say that the practice of Brahmacharyya, religious austerity, (which according to Medhatithi includes abstinence from sexual connexion) for *one full year* after marriage is obligatory. It is quite optional with men to observe the practice for only 3 days or for 12 days or for a whole year. As abstinence can in reality be practised by very few, it is not right that the period (which optionally may be 3 days or 12 days or one year) should compulsorily be made one year for all.

II. That the text of Yájnavalkya expressly lays down that *Brahmacharyya* (religious austerity) is not broken by approaching wife at *ritu*. The text with the *Mitakshará* commentary is given below.

६६ । षोड़शर्त्तुनिशा स्त्रीणां तासु युग्मासु संविशेत् ।
ब्रह्मचार्य्येव पर्व्वाण्याद्याश्चतस्रश्च वर्ज्जयेत् ॥

याज्ञवल्क्यवचनम् ।

अतो यत्र ब्रह्मचर्य्यं श्राद्धादिषु चोदितं तत्र गच्छतोऽपि ब्रह्मचर्य्यस्खलनदोषो नास्ति ।

66. The *ritu* of women consists of 16 nights: one should approach them on the even (not odd) of those nights [*i. e.* on the nights of the even lunar days like *shashthi* etc., during these 16 nights.] A *Brahmachári* (one practising religious austerity) even should (approach his wife on such nights). But the first four nights and the days of *Parva* (certain lunar days) should be left out.

Text of Yájnavalkya.

Hence when *Brahmacharyya* (practice of religious austerity) has been laid down as in *Sráddha* and other cases, even then by approaching one's wife (at *ritu*) one does not violate one's *Brahmacharyya.*

Mitákshara.

The following is another text quoted by *Sulapáni* to the same effect.

६७। स्त्रीणां संप्रेक्षणात् स्पर्शात् ताभिः संकथनादपि।
ब्रह्मचर्यं विपद्येत न दारेषु तु संगमात्॥
शूलपाणिधृत देवलवचनम्।

67. Even by looking at, touching and speaking with women, *Brahmacharyya* is violated, but not by approaching one's wife at *ritu*.

Text of Devala quoted by Sulapáni.

III. That, even supposing Medhatithi's opinion to be the right one. it can not be of any avail in the present case. A girl may be, and is ussually, married at her 10th year. She gets the *ritu*, say, when she is 11 years and 6 months old. In this case, the year after marriage for which *Brahmacharyya* is prescribed according to Medhátithi, will have expired six months before the appearance of the *ritu*. So that in such cases (and these cases would be of the most frequent occurrence) the passage of Medhatithi will not save a husband from committing sin if he omits to approach his wife at *ritu*.

This conclusive argument is also applicable in the case of the text of Baudháyana, already referred to, on the strength of which it has been attempted to be maintained that a husband may refrain from approaching his wife for three years. For if a girl is married when she is 8 years old (and marriage of girls at 8 is not unusual) and she gets the *ritu* after eleven, the period of three years will have elapsed between her marriage and the appearance of the *ritu*.

(7) One of the arguments, which the supporters of the measure, including Dr. Bhandarkar consider to be one of their strong points, is that texts are not available in which *Garbhádhána* at the very first *ritu* is distinctly laid down.

Of course the injunction "approach your wife at *ritu*" includes the first *ritu*; but still this will not satisfy these supporters of the Bill, they will not have

inference of this kind, they want distinct texts. Of course it is not incumbent on the opponents of the measure to find out such distinct texts for them. They are strong in the position they have taken; they stand on custom and to vitiate a custom, their opponents are to find out distinct texts condemning the custom (condemning, be it observed, for the mere negative fact that the *Sástras* do not enjoin it, can be of no avail.)

But the opponents of the measure are ready to oblige their adversaries by quoting distinct texts. Three have already been quoted in the Addendum, *viz.*

1. One is a text from the *Aswaláyana Grihya Parisishta* beginning with "प्रथमर्त्तौ मत्याः" (p. 4 No. 6) Here the words "ऋतौ प्रथमे" "at the first *ritu*" distinctly occurs. Some however contend that the adjective "प्रथमे" "first" here qualifies "अह्नि" "day" and not ऋतौ (*ritu*). This point of course can only be satisfactorily settled by eminent Sanskrit scholars.

2. The second is the text of *Páraskara* beginning with the words तामुदुह्य (p. 4 No. 8). Here as the connection at *ritu* after marriage is mentioned it is distinctly to be understood, that the connection must be made at the first *ritu* after marriage, which in the case of those married before *ritu* must necessarily be the very first *ritu*. But it may be said that this is also a matter of inference.

3. The third is the text from the Brahma-purána quoted on (p. 12 No. 34). In this the word प्रथमार्त्तवे at the *first ritu* distinctly occurs.

A new text not quoted before may also be given in which the *first ritu* is distinctly mentioned. It is as follows :—

६८। गर्भाधानं द्विजः कुर्य्यादृतौ प्रथम एवहि।

आश्वलायन-स्मृतिवचनम्।

68. A twice born shall perform *Garbhádhána* at the very first *ritu*.
Text of Aswaláyan Smriti.

The use of the words "प्रथम एव हि" *the very first*, can leave no doubt whatever on the point that the ceremony ought to be performed at the first *ritu*.

It is unnecessary to examine the arguments that have been based upon medical texts. The medical authorities differ among themselves on the point. It has also been remarked that while medical science necessarily looks to the mere physical side of *Garbhádhána* the *Dharmasástras* look chiefly to its spiritual side. Be that as it may, it has already been shown that in a difference between *Dharmasástras* and *Arthasástras* the *Dharmasástras* ought certainly to be followed. (Addendum *p.* 20.)

The chief point of Dr. Bhandarkar's arguments most of which have been met in the preceding examination of the arguments of the Hon'ble Mr. Telang and others, is that he has discovered from certain texts that in ancient days, women were married after puberty and that the *Garbhádhána* ceremony was not then always performed and that it could not possibly be performed at the first *ritu* in all cases. To this it ought to be a sufficient answer to say that if such practices were at all countenanced in old days, they have long been put down. We have to do with the *Sástras* that are observed in the present day. It would be idle to go to days of post-puberty marriage ; for then

we might as well go back to the time pictured in the *Mahábhárata*, when the institution of marriage itself had not come into existence. In a discussion of the *Sástras*, historical explanation of apparently contradictory texts is not perhaps in accordance with orthodox practice. But the statement may perhaps be safely made that in this matter of marriage, we can trace in the Hindu *Sástras*, the very beginnings of civilized societies, including the institution of marriage itself; we can trace the gradual abolition of the different forms of barbarous marriages which still prevail in many societies; we can see that the age of the marriage of girls, for a long time after the interdiction of promiscuous intercourse, must have been after puberty; that the evils of late marriages, especially in a society which is based upon the institution of caste and in which the joint family system plays so important a part, were successfully combated by a gradual lowering of the marriageable age of girls below the age of puberty, that there has been a systematic plan in all this, and that to raise the marriageable age of girls (which, after all, must be considered to be the end and aim of all legislation like the present one) would be a most retrograde movement according to Hindu ideas and beliefs.

Be that as it may, the preceding examination of the most important arguments of the ablest supporters of the Bill, will, it is hoped, convince all that the supporters of the Bill have, not only; not been able to make out their case by proving what they had to prove, *viz.* that the present custom of *Garbhádhána*, in Bengal (at any rate), is repugnant to the *Sástras*, but that they have not been able to assail, with any success, even the outworks of the defensive position taken up by Hindu Society.

Whatever light European criticism of the *Hindu Sástras* may throw upon the history of Hindu Society generally, and upon this question of *Garbhádhána* in particular, for the purposes of this controversy that light must be perfectly useless. For after all is said, the fact remains that the Pandits in the land,—men to whom the people repair for guidance in their religious matters,—"the family priests and *gurus*", whose opinions, indeed, and not the opinions of Europeans or Europeanised scholars have any weight with the people, including all the great Sanskrit scholars whom Government decorated with the title of *Mahámahopádhyáya* "the great-great-professors of learning" have unequivocally maintained that to prevent the ceremony of *Garbhádhána* being perfomed in the case of girls attaining puberty before 12, would be a violation of the Hindu Religion. What the people really believe, what their accepted priests and teachers teach them to believe and practise, is their Religion and to abolish the ceremony of *Garbádhána*, in certain cases, by the present measure would be a most clear interference with the Religious beliefs and practices of the Hindus; and as such no loyal subject of Her Gracious Majesty the Queen-Empress, who takes any interest in these matters, ought to refrain from endeavouring to force this conviction on His Excellency the Viceroy in Council, and praying with all humility and earnestness that His Excellency may be pleased to order the withdrawal of the Bill.

A SECOND NOTE

ON

THE CONSENT BILL.

THE Committee appointed at the Public Meeting held at Bali, on the 18th January last, to submit a memorial to Government protesting against the "Consent Bill" have considered it their duty to submit another note in continuation of the memorial and note already submitted by them. The importance of the subject is their excuse for troubling Government again and again. They consider that, one of the most important, if not the *only* most important point in connexion with the Bill is the question whether it does violence to Hindu religion or not. They have endeavoured their best to convince Government that the Bill *does* violence to the Hindu religion and have examined with the result, as they venture to think, of having completely demolished the *Sastric* arguments advanced by some supporters of the Bill, as the Hon'ble Mr. Telang, Dr. Bhandarkar and others. They find, however, that certain other texts not referred to by them are being pressed into the service of the supporters of the Bill, and it has, therefore, become their duty to examine these. It is the more necessary to do so as one of these texts enables them to correct a generally received impression, though as it would presently appear probably an erroneous impression, that the interference with the Hindu religion complained of in connexion with the Bill is not new, as, if there is any

interference in the matter at all, that interference was made 30 years ago when the Penal Code became law and interdicted sexual intercourse between man and wife when the latter was 10 years of age, though she got the *ritu* before that age. The correctness of this impression was in a manner admitted in the memorial submitted by the Committee (*vide* p. 5 of the reprinted pamphlet) where the following passage in this connection occurs :—

"Your Excellency's memorialists have also noted that some defenders of the bill have attempted to make much of the fact that the present bill introduces no new principle in the criminal law of the land, that if it interferes with Hindu religion, the present provision of the Penal Code in this connection also interferes with Hindu religion in the case of girls who get their *ritu* before ten. To this it ought to be a sufficient reply to say that it can by no means be maintained that because the present law might in some very exceptional cases interfere with Hindu religion, therefore it is allowable to interfere in a multitude of cases. For girls to get their *ritu* before ten is a rare occurrence, so rare indeed that it may almost be said to be phenomenal; but for girls between 11 and 12 it is quite an usual occurrence."

So far as it goes, it in a manner admits that the existing provision of the Penal Code is an interference which takes place only in very exceptional cases, say one case in a hundred thousand, whereas the present Bill would interfere in about 30 cases in a hundred. This admission, however, need not have been made, for a text of *Vyasa* quoted in Madhava's *Parasara Smriti*, and in *Nirnaya Sindhu* points to the fact, that according to the *Sastras*, *Garbhadhana* was not compulsory on a girl getting *ritu* before 10.

Here is the passage from Madhava's *Parasara Smriti*.

ऋतुकालानभिगमने यो दोषोऽभिहितः, तस्यापवादमाह व्यासः—

"व्याधितो बन्धनस्थो वा प्रवासेष्वथ पर्व्वसु ।
ऋतुकालेऽपि नारीणां भ्रूणहत्या प्रमुच्यते ॥
वृद्धां बन्ध्यामवृत्ताञ्च मृतापत्यामपुष्पिताम् ।
कन्याञ्च बहुपुत्राञ्च वर्ज्जयन्मुच्यते भयात् ॥

60 Vyása lays down the exception to the rule mentioned before of sin being committed in not approaching the wife at *ritu.*

One who is ill, who is in prison, who is absent, (one not approaching) on certain days of the moon called *parva* is free from the sin of *Bhrunahatya* (murder of a child in the womb) in not approaching wife even at *ritu.*

Not approaching a wife who is either old, barren, unchaste or whose children do not live, or who is not *pushpita* (*i. e.* has not flowered or got the *ritu*) or who is a *kanya* (a girl of 10 years of age) and one who has many sons, one is free from fear (of sin).

From the second text of Vyasa quoted above, it would seem that there is no sin in not approaching a wife who is a *kanya.* As the term *kanya* has been defined by Parasara, the father of Vyasa, to mean a girl, who is 10 years of age, it follows that if a girl gets *ritu* before 10, consummation of marriage is not compulsory. So that the existing provision of the Penal Code does not, strictly speaking, interfere with Hindu religion.

It must be confessed, however, that this second text of Vyasa is not without its difficulties. There are reasons to suppose that it cannot be taken as confined to laying down exceptions to the general rule of sexual intercourse at the time of *ritu.* These may be briefly stated as follows :

1. Both the texts of Vyasa have been quoted in this connection, as laying down exceptions to the obligatory rule of sexual intercourse at *ritu* in the *Parasara Smriti* of

Madhava, as also in the *Nirnaya Sindhu.* (1) But the first of the two texts, and not the second, is quoted in the *Viramitrodaya.* (2.) This may be owing to the author of the *Viramitrodaya* having felt that this second text could not be taken as meant solely to lay down an exception to the rule of sexual intercourse at *ritu.*

2. The word *Briddha*, old, has been explained in the *Nirnaya Sindhu* as *gatarajaskam*, one whose catamenia has ceased (through old age). When the author of the *Nirnaya Sindhu* gives this meaning to the word *Briddha*, it is evident that he also does not think that the text applies only to cases of sexual intercourse at *ritu.*

3. The word *apushpita* also, which means one who has not flowered, that is one in whom catamenia has not appeared, occurs in the text. Some supporters of the Bill, taking the text as applying only to cases of sexual inter-

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(१) अगमने दोषमाह पराशर:। ऋतुस्नातान्तु यो भार्य्यां सन्निधौ नोपगच्छति। घोरायां भ्रूणहत्यायां पच्यते नात्र संशय:। अस्यापवादमाह मदनरत्ने व्यास:। व्याधितो बन्धनस्थो वा प्रवासेष्वथ पर्व्वसु। ऋतुकालेऽपि नारीणां भ्रूणहत्या प्रमुच्यते। वृद्धां बन्ध्यामसद्वृत्तां मृतापत्यामपुष्पिनीम्। कन्याञ्च बहुपुत्राञ्च वर्ज्जयन्मुच्यते भयात्। वृद्धां गतरजस्काम्।—निर्णयसिन्धु:

(२) इदं चतुर्गमनं स्वस्थं सन्निहितं प्रत्युच्यते। ऋतुस्नातान्तु यो भार्य्यां सन्निधौ नोपगच्छति। य: स्वदारानृतुस्नाताम् स्वस्थ मन्नोपगच्छतीति पराशरस्मरणात्। अतएव स्वस्थादरगमने दाषाभावमाह व्यास:। व्याधितो बन्धनस्थो वा प्रवासेष्वथ पर्व्वसु। ऋतुकालेऽपि नारीणां भ्रूणहत्या प्रमुच्यते। नारीणां ऋतौ प्रवासादिगते पत्यौ अगमनेऽपि भ्रूणहतया न भवतीति अर्थ:। वीरमित्रोदय।

course at *ritu*, have attempted to explain this word as meaning a girl, who, though she has got the *ritu*, has not reached such maturity as to fit her for child-bearing. This position is, to say the least, untenable. No authoritative commentators have ever taken the word *apushpita* in such a sense. According to the rules of Sanskrit Grammar, this interpretation is simply impossible. Grammatically, the word *apushpita* can only mean one who has not got the catamenia, the word *pushpita* meaning one who has got the catamenia. It can never refer to the negation of a qualified *pushpa* or catamenia. Such an interpretation has indeed nothing to support it, except the fact that it occurs in a text which is supposed to apply to cases of sexual intercourse at *ritu*. But as has been already shown there are strong reasons in support of the view that the text can not refer exclusively to such cases.

Some supporters of the Bill again want to take the word *kanya* as meaning a girl of 12. But it is scarcely necessary to say that there is no authority whatever for this interpretation. On the contrary, Parasara, the father of the text-writer, as has already been said, has expressly laid down that *kanya* technically means a girl of 10 years.

It seems unnecessary to discuss this text further. It is, however, only fair to mention that some would construe the word *apushpita* as qualifying the word *kanya* instead of taking it by itself. Others again would take the word *kanya* as meaning a *kumari*, a virgin, or unmarried girl. If either of these be the right interpretation, then the argument based upon this text that the existing provision of the Penal Code does not do violence to the Sastric rule of consummation of marriage at the first *ritu*, would doubtless fall to the ground.

From the above discussion it is evident that whatever may be the right interpretation of the text, it lends no countenance whatever to the supporters of the Bill.

Opportunity may here be taken to note another text which is said to be much relied upon by the supporters of the Bill. The text is as follows :—

सखि भार्य्या कुमारी च सगोत्रा शरणागता ।
साध्वी प्रव्रजिता राज्ञी निक्षिप्ता च रजस्वला ॥

* * * * * * *

आसामन्यतमां गच्छेद् गुरुतल्पग उच्यते ।

वृद्धहारीतसंहिता ।

70 A friend's wife, a virgin, one of the same *gotra* (family), one who seeks protection, a chaste woman, an ascetic woman, a queen, one cast away or abandoned and one at the time of *ritu* &c. &c., he who has sexual intercourse with any of these is said to defile the bed of his *guru* (Spiritual father).

In a printed edition of the *Sanhita* there occurs a misprint in the first word, where it is spelt with a long *í* (*sakhí*) instead of the short *i* (*sakhi*). On the strength of this misprint, the first three words of the text have been taken to mean a female friend and a *kumari* wife of 12 years (the word *kumari* being explained to mean a girl of 12 years); and thus the text has been pressed into the service of the supporters of the Bill. A little consideration will, however, show that this cannot be done. There are texts equivalent to the above in which the word *sakhi* (with the short *i*) meaning a male friend, or an equivalent word as *mitra* is used, leaving no doubt that in this text the true reading is *sakhi* (with the short *i*) and that the long *í*." is spurious.

The following text of Manu is one in point :

गुरुतल्पव्रतं कुर्य्यात् रेत: सिक्त्वा स्वयोनिषु ।
सख्यु पुत्रस्य च स्त्रीषु कुमारीष्वन्त्यजासु च ॥

प्रायश्चित्तविवेकधृत मनुवचनम् (१८४ पृ:)

71

It is unnecessary to give a translation of the text. The point to note is that here the words *sakhyuh strishu* (friend's wives) distinctly occur.

Here is a text of Vishnu :

मित्रपत्न्यभिगमनं स्वसृसख्याः सगोत्राया उत्तमवर्णाया अन्त्यजायाः कुमार्य्या रजस्वलायाः शरणागतायाः प्रव्रजिताया निक्षिप्तायाश्च अनुपातकिनस्ते महापातकिनो यथा। अश्वमेधेन शुद्ध्युः

प्रायश्चित्तविवेकधृत विष्णुवचनम् (१८३ पृ:)

72 In this text the word *mitrapatnyavigamana*, sexual intercourse with the wife of a Mitra (a male friend) occurs.

It is evident, therefore, that the text of *Bridha Harit* in question gives no countenance whatever to the supporters of the Bill.

There is, however, a text of Gautama

न कन्यां श्लिष्येत्।

गौतम, ९अ।

73 "One should never embrace a *Kanya*"

If the word *Kanya* here is intended to be taken in the technical sense of a girl of 10 years according to the well-known text of Parasara—

अष्टवर्षा भवेद्गौरी नववर्षातु रोहिणी।
दशवर्षा भवेत् कन्या अत ऊर्द्ध रजस्वला॥

74

(Text No. 41, p. 15 of the Reprint of the pamphlet), it would go to show that the Penal Code as it stands, does not interfere with the Hindu religion as even if a girl were to get the *ritu* at 10, sexual intercourse should not be had with her according to this text.

Some have taken the word *Kanya*, in the above text as meaning *avyanjita* (one without signs of maturity) in accordance with the text.

अप्राप्तरजसो गौरी प्राप्ते रजसि रोहिणी।
अव्यञ्जिता भवेत् कन्या कुचहीना तु नग्निका॥

75 One who has not attained the age of menstruation is a *Gauri*, one who has attained that age is a *Rohini*, one without signs of maturity is a *Kanya* and one without breasts is a *nagnika*.

Now there cannot be the least doubt that this text cannot convey a meaning different from the text of Parasara referred to above. The terms used are the same and the purpose, therefore, must be the same. Taking the one text with the other we can only come to the conclusion that a girl is called *Gauri* when she has not attained an age when there is any possibility of the occurrence of the menses; a girl is called *Rohini* who has attained an age when there is a chance of the appearance of the menstruation, and a *kanya* is one without signs of maturity, which usually appear after 10. It can, therefore, by no means be maintained on the strength of this text that a *kanya* is a girl that has got the *ritu*, but has not the signs of maturity well-developed. The actual attainment of *ritu* usually takes place *after*, and not before, the physical development referred to in the word *nagnika*. To take the text of Gautama, therefore, as interdicting sexual intercourse after the appearance of the *ritu* (at least of normal *ritu* which is expected after 10 according to the text of Parasara) is evidently to do a violence to the *Sastras*.

Perhaps the strongest argument of those who oppose the Bill on the ground of its interference with the Hindu religion, is that a custom which is in usage in any particular place is obligatory on Hindus of that place. *Garbhadhana* at the time of the first *ritu* is the custom in Bengal, and hence in Bengal it has all the force of a religious obligation. It is not necessary to support the custom by *Sastric* texts. Those who want to impugn the custom must show that it is

condemned in the *Sastras.* Even such a great religious observance as the Durga Puja in the way in which it is conducted in Bengal is unknown to what is usually known as the *Sastras.* But it is a religious observance nevertheless and to abolish it (as some reformers propose to do on the ground that idolatry is not countenanced by the *Vedas*) would certainly be an interference with the Hindu religion as it obtains in Bengal at the present day. The very same thing may be said of the ceremony of *Garbhadhana* at the very first *ritu.* To assail this impregnable position Dr. J. N. Bhattacharjya has quoted the following passage from Srikissen's commentary on the *Dayabhaga*

आचारस्य नित्यत्वे प्रमाणाभावात्

76

which he translates as "there being no sanction to render an *achar* or custom obligatory."

The passage in which Dr. Jogendra Nath Bhuttacharjya's quotation regarding *achar* occurs is as follows :—

आचारस्यैव साधूनामित्यनेनाचारस्यैव वेदमूलकत्वाभिधानात् नत्वनाचारस्येति भावः। नच श्रुतौ प्राच्यपदाप्रवेशेऽप्राच्यानामपि तत्प्राप्तेस्तेषां तदकरणात् प्रत्यवायापत्तेरिति वाच्यम् आचारस्य नित्यत्वे प्रमाणाभावात्।

77 It will be seen from the above that though a custom obtaining only in one part of the country, does not thereby become universally binding it does not lose any portion of its obligatory force on people among whom the custom prevails, as a Vedic text is always to be presumed as the basis of a custom existing among good people. A text of the Vedas is to be presumed as the basis only of an existing custom and cannot, therefore, furnish the basis of a custom having no existence.

The *Holi* festival for instance is a custom prevailing, say among the occidentals and a text of the Vedas is therefore to be presumed as the basis of that custom. It is not, however, obligatory on persons living in the east where no such custom prevails, for custom as a custom is not universally obligatory. This is all that is meant by Sri Krishna Tarkalanker when he says :—

आचारस्य नित्यत्वे प्रमाणाभावात्

78 On account of its not being "nitya" of universal application.

Dr. Jogendra Nath indeed says:—"Ceremonies sanctioned by custom *only* could never be binding." If by this *only* he means that a custom which is repugnant to the *Sastras*, is not binding, he is right. In no other sense is the proposition tenable. In the addendum to the memorial sub- [illegible] Committee, several texts (Nos. 1, 2 and 3) have [illegible] prove the authority of custom and many others [illegible] quoted. The fact is that the point is incon- [illegible] established that a custom is obligatory, unless it can be distinctly shown to be condemned by the *Sastras*; only such a custom has properly no binding authority. It is needless to say that supporters of the Bill have not quoted any texts *condemning* the ceremony of *Garbhadhana* at the first *ritu*, as it obtains in Bengal. Different customs may prevail in this respect in different parts of the country, it may be admitted for argument's sake that the *Sastras* do not enjoin that it ought to be performed at the very first *ritu* and that therefore it may be postponed; but all this can be of no avail in the present controversy, for the Hindu of Bengal, where the custom of *Garbhadhana* at the *first ritu* obtains, the ceremony is obligatory and to interfere with it would be an undoubted interference with his religion.

The Committee beg to observe that unless Government is satisfied that the Bill in its present form does interference with the Hindu religion, or is prepared to take up the position that in a matter like this it is not bound to regard the Hindu religion but that, as in the case of *suttee*, it can abolish what it considers a pernicious custom—unless Government is prepared to take up this position, it should before passing the Bill publish the opinions received by it and the grounds on which it considers why the measure would not interefere with the Hindu religion. Unless an opportunity is thus given to 'the people to explain the exts

and answer the arguments brought forward in support of the Bill, they will have reason to consider themselves, as hardly used. The position taken up by the Hon'ble Sir Romes Chandra Mitra that the Legislature as at present constituted is not competent to decide a *Sastric* controversy like the present, is certainly a strong one. In a matter like this when a large section of the Hindu people feel and state that their religious beliefs and practices would be interfered with, Government ought to accept the statement, without going into the question whether their beliefs and practices are justified by the *Sastras* or not. That is entirely the people's affair. Government has only to inquire whether the feeling and the practice exists or not as a matter of fact. If, however, Government is pleased to think otherwise the Committee beg most respectfully to pray that an opportunity may be given them, before the Bill is passed, to meet the *Sastric* arguments advanced in support of the measure. It is true that to do this, it would be necessary to postpone the passing of the Bill for some time. But the matter is not of such urgency that it cannot be so postponed. When it is borne in mind that the Bill was introduced into the Council only on the 9th of January last, that before its introduction the people had not only had no inkling of the intentions of Government in this matter but had actually fancied that they could afford to disregard the foul libels on their Society uttered by over-zealous reformers as the Indian Government could not undertake Social reforms by Legislative enactments after the statesman-like decision of Lord Dufferin's Government so late as in 1886, when all this is borne in mind, it will not, it is hoped, be considered unreasonable if the people think that the space of 69 days (from the 9th of January to the 19th of March 1891 when it is said it would be passed into law) is hardly sufficient

time to allow for the discussion of such an important measure which would vitally affect the well-being of Hindu Society, and which, they sincerely believe, would involve interference with their religious and social customs. Not even to accede to this humble request would argue a want of sympathy with the people which the past conduct of Government had not prepared them to apprehend.

The religious objection to the Bill can be completely removed by the substitution of the age of the first appearance of the catamenia (after 10 years may be added 'if the existing provision of the Penal Code is not to be disturbed') for the 12 years age. On other grounds also this would be an improvement on the Bill. It is, therefore, earnestly hoped that Government may graciously be pleased to make this concession to the plaintive wail of a whole people to save their religion. Christian rulers should not forget the golden rule Christ taught—"Do to others as ye would others should do unto you;" nor should they forget that an earthly king may not heed a people's agonised cry for mercy, it may not be unheeded by the Great King of Kings.—"Our Father which art in Heaven."

This note cannot be better concluded than with the summary of objections to the Bill prepared by the most distinguised member of the Committee, the Raja Peary Mohun Mukerjee C. S. I.

"Considerations bearing against the Bill :—

1. No case of necessity has been made out. The records of courts and private medical practice have not disclosed even half a dozen well authenticated cases of brutal conduct in 30 years. Mr. Malabari and his friends originally based their demand for an amendment of the law on the remote evils of early-marriage. It is only Hari Maiti's case that has been a

sort of Godsend to them and they have turned it into a handle to gain their object by libelling the whole nation.

2- The present law is amply sufficient to punish all cases of brutal conduct on the part of the husband ; and if it is deemed not sufficient it may easily be made so.

3. An act which causes no injury should not be charaterized an offence much less such a heinous offence as rape.

4- The proposed law goes even beyond the English law which does not characterize the offence a rape. In England girls may be married at 12 which age may be taken to correspond to 10 or 11 in this tropical country, yet in England premature sexual intercourse after marriage is no offence at all.

5. The proposed law would do violence to the religious beliefs and usages of the Hindus as enjoined by responsible experts in their Shastras.

6. It is the interpretation of the Shastras by those whose opinions govern the people that should guide Government in this matter, and not any interpretation or text which is not recognized by the community. The pandits who assembled in two large meetings in Bengal and Behar have unanimously condemned the proposed measure as one opposed to Hindu religion and usage.

When men like Pandit Iswara Chandra Vidyasagar, C. I. E. and Mahamahopadhyaya Mahesh Chunder Nyaratana, C. I. E. and all the Mohamohopadhyas of Bengal, Behar, Bombay, &c. have declared against the Bill on the ground of religion—the religious question ought to be considered as settled against the Bill.

7. Consummation of marriage at the first appearance of the catamenia (after 10) is a religious custom in Bengal and religious customs are binding upon the people and unless such customs are expressly condemned in the Shastras they have all the force of religious duties which the legislature cannot abolish without doing violence to Hindu religion.

8. The restriction contained in the Indian Penal Code is in strict accordance with the Shastras as laid down by Vyasa' Asiatic Society's Edition of Parasara Madhava, p. 505.

9. Excepting a few gentlemen all who have supported the Bill, are neither Hindus nor Mahomedans and have nothing in common with the nation.

10. The two Mahomedan Associations which have supported the Bill have qualified their opinions with suggestions for amendment which would materially alter the character of the Bill, while a vast body of Mahomedans consider the provisions of the Bill to be opposed to their religion.

11. The measure involves a system of inquisition and oppression by Police and Magisterial officers which would be turned into an engine for satisfying private revenge by designing persons.

12. Whether a case be true or false the effect of it upon the girl would be life-long misery and disgrace, and an attempt may have to be made to save them by passing 'Divorce Laws' for the re-marriage of such girls in the life time of their husbands. The Hindus look upon 'Divorce Laws' with peculiar aversion.

13. Far from the measure having any educative influence it would give rise to fraud and decoit and work a moral degeneration of a grave character. The Bill in fact cannot do any good, for the truth is that such social reforms as are contemplated by the Bill cannot be produced by acts of the legislature.

14. There is no system of registration of births in the land. Such a Bill could only, be fairly introduced, if at all, 12 years after the establishment of a complete and satisfactory system of compulsory registration of birth throughout the country.

15. It would be the first measure which will militate against what has always been the fixed policy of Government in regard to the religious and social economy of the people. Sut-

tee, infanticide &c., are really not cases in point. Nor were even these abolished after the Proclamation.

16 The people are afraid that the measure is a covert attempt to abolish early marriage ; and supporters of the Government in the Anglo-Indian Press confirm their fears. And it is to the agitation of avowed enemies of early marriage that the Bill owes its origin.

17. Rightly or wrongly people will lose all confidence in the pledges of Her Majesty the Queen-Empress and of the British Nation.

It would stamp the Government as an unsympathetic and arbitrary Government. In that view devotedly loyal subjects of the Queen-Empress cannot but regard the measure with a certain sense of alarm and uneasiness.

18. The substitution of the time of the first appearance of the catamenia would completely remove the religious objections to the bill and would in itself be a great improvement as the protection sought to be given to girls would in that case be largely extended.

PEARY MOHUN MUKERJEE."

APPENDIX D.

CONTAINING THE

APPEAL

TO THE

VICEROY

Immediately before the passing of the Consent Act to save the Hindu religion by fixing the Puberty limit instead of the 12 years-age limit in the Bill.

AN

APPEAL TO THE VICEROY

TO SAVE THE HINDU RELIGION

By the substitution of Puberty for Twelve years Age in the Consent Bill.

PUBLISHED

BY

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NOTE.

In publishing this appeal, the Committee of the Báli Sádhárani Sabhá beg to express the hope that as Government seems determined to pass the Consent Bill, the efforts of the people should now be concentrated in praying Government to substitute the age of puberty for the 12 years age limit in the Bill. The social and other objections to the Bill are certainly strong. But the strongest objection of all is that it would do violence to the Hindu religion and virtually annul the Proclamation of Her Majesty, which is justly regarded as the great Charter of the religious liberty of the people. If the Bill now is so modified as to be free from this objection, a most important concession will have been obtained, for which the people ought to feel grateful. The law of the land and the Hindu Sástras will then be brought into harmony, and every pious Hindu might take the Bill as meant to uphold the authority of the Sástras instead of doing violence to them.

BALI,
March 11, 1891.

AUBINASH CHUNDER BANERJEE,
Honorary Secretary.

To

HIS EXCELLENCY THE RIGHT HON'BLE
HENRY-CHARLES-KEITH, PETTY-FITZ-MAURICE,
MARQUIS OF LANSDOWNE, G.M.S.I., G.C.M.G., G.M.I.E.,
Viceroy and Governor-General of India in Council.

The Humble petition of the undersigned inhabitants of Bali Uttarpárá, and the neighbouring villages—

MOST RESPECTFULLY SHEWETH—

THAT your petitioners beg to approach Your Excellency with their last humble prayer in connection with the "Age of Consent Bill," namely, that unless Your Excellency should order the withdrawal of the Bill altogether, Your Excellency will graciously be pleased so to modify it as to make puberty as manifested by the occurrence of a certain physical condition, the limit instead of the proposed 12 years age, so that the Bill may not interfere with the religious beliefs of a large section of the Hindu population of Her Majesty's subjects in this country.

2. Your Excellency's petitioners have scarcely any occasion to trouble Your Excellency with many arguments in support of their prayer, for they have been ably set forth by the Hon'ble Sir. Rames Chandra Mitra in his note of dissent in the report of the Members of the Select Committee. They will, therefore, content themselves with simply supplying what they consider an important deficiency in the Hon'ble Member's note regarding the religious objection to the Bill. They beg in the first place to observe that the Hon'ble Member does not seem to have given its due weight to the religious objection to the Bill. On this point, he says :—"It has been said that according to the true reading of the Sástras, the alleged religious difficulty does not really

exist. I do not think that the Legislature, as at present constituted, can satisfactorily deal with the question of the Sástras. It can be satisfactorily dealt with only by experts. Many experts have submitted their views, but in my opinion the Legislature as at present constituted is not competent to say which opinion is correct." Your petitioners humbly submit that if the opinions of experts in the Sástras submitted to Government be weighed and measured as well as counted, the balance will unquestionably be found to be on the side of those who maintain that the Bill is open to the religious objection. All the eminent Pandits of the country, the hereditary repositories of Sástric lore, all the great men of Sanskrit learning, whom Government itself honoured with the title of *Mahamahopadhyayas* have given it as their opinion that the religious objection to the Bill is a very real one. Against this opinion that of a few European or Europeanised Sanskrit scholars cannot certainly avail. It is true the Hon'ble Sir Rames Chandra has added the following: "There cannot be any doubt that according to the current interpretation of the Sástras given by the Bengal Pandits, such as Pandit Iswar Chandra Vidyáságar and M. M. Mahesh Chandra Nyaratna, the religious objection taken does really exist." No doubt the names of two such men as the Venerable Pandit Iswar Chandra Vidyáságar, C.I.E., who is perhaps the profoundest Sanskrit scholar of the day, and who is the father of social reform in India, to which cause he has devoted his noble unselfish life and the wealth of a powerful mind richly endowed by nature and varied culture, and Mahamahopadhyaya Mahesh Chandra Nyaratna, C.I.E., whose reputation as a Sanskrit scholar is indeed European, at whose feet such ripe scholars as Dr. Cowell consider it still a privilege to sit, applying to him the epithet of "*Sarva-sansáya-chchhettá*," the remover of all doubts and difficulties, and whose advanced

opinions on many questions and devotion to Government have enabled him to support some unpopular Government measures,—the names of two such men are a guarantee that an opinion on a Sástric question in which they agree is beyond controversy. Nevertheless, the main point in the religious argument is left out by the Hon'ble Sir Rames Chandra Mitra. He has not said that a religious custom, unless it can be shown to be repugnant to the Sástras, is binding on Hindus; that in this controversy, though the position has been taken up, that according to the Sástras the ceremony in question may be postponed, so that it is not obligatory to perform it on the very first occasion, no one has been bold enough to assert that the performance of the ceremony on the first occasion is *repugnant* to the Sástras. Unless, therefore, this can be shown, the custom, as it obtains in Bengal, namely, that the ceremony must be performed on the very *first occasion*, is obligatory on orthodox Hindus of Bengal. It is not necessary to support any Hindu religious rite of the present day by express Vedic texts. The Hindu religion, originating in the Vedas, have developed itself in different ways in different parts of the country, and many of the present Hindu religious observances have no express sanction in the Vedas. To take only one notable instance. The Durga Pujah in the way it is conducted in Bengal is unknown in other parts of the country, and no sanction for it is to be found in the Vedas. Indeed some religious reformers go so far as to maintain that idolatry like the Durga Pujah is not consonant to the teaching of the Vedas, and ought therefore to be abolished. Nevertheless, it cannot certainly be said that the abolition of the Durga Puja by an act of the legislature would not be an interference with the present Hindu religion. The very same thing can be said of the ceremony so often mentioned in the present connexion. If it is not expressly enjoined in the Sástras, if it is not observed in the same way in other

parts of the country, it is not the less binding on the Hindus of Bengal; and to interfere with it would be an interference with their religion, and a violation of the Proclamation of Her Gracious Majesty. Nothing less than a clear demonstration that the Sástras unmistakeably condemn the practice as it obtains in Bengal, can save the Bill from being an interference with the present religion of the Hindus in Bengal, and it is scarcely necessary to add that such demonstration is not and cannot be forthcoming.

3. Your Excellency's petitioners beg humbly to represent that as the Bill would most certainly interfere with their religious beliefs, they would consider its passing in its present form as a great calamity, and they therefore humbly implore you so to modify it as to steer clear of the religious objection. This can easily be done by the substitution of the attainment of puberty for the age of 12 years in the Bill. The Hon'ble Sir Rames Chandra Mitra has pointed out how the adoption of this amendment would in reality be an improvement on the Bill even from the Reformers' point of view. For he has shewn by statistics, what Your Excellency's petitioners are able to corroborate by their own experience, that the majority of girls in this country attain puberty *after* and not before 12. If an "Age of Consent" has to be fixed by statute, it is certainly better that the age should be fixed where nature herself has fixed it than at an arbitrary number of years. It is of every day experience that a girl below twelve, say eleven years and six months, may have relatively attained much greater maturity than a girl of 13 or 14 even. Much depends upon individual constitution, and nature's indications are certainly to be preferred to a hard and fast age limit. By adopting this puberty limit, the Bill instead of being hostile, as it is in its present form, to the spirit of the Sástras, will be in complete harmony with it. The Bill in its present form violates the Sástras at both ends. It violates the Sástras (according to the received

interpretation of the Bengal School of Pandits at any rate), by preventing consummation of marriage on the attainment of puberty before 12, and it violates the Sástras, that denounce consummation before puberty, by legalising it after 12, though puberty might not have been attained at that age. It may be said that this second violation of the Sástras was made when the Penal Code was passed nearly 30 years ago. But then the question was not much considered by the Hindu community, who were in fact generally altogether ignorant of the matter. When the question is reopened, it ought to be settled in a satisfactory way once for all.

4. Your Excellency's petitioners need not lay stress on the fact that in this country, where there is no system of registration of births (the system in vogue in Municipalities even being perfunctory), proof of the attainment of puberty is easier than proof of age. This point has been mentioned by the Hon'ble Sir Rames Chandra. It has also been strongly stated by Mr. R. D. Lyall, Commissioner of the Chittagong Division. This distinguished officer has said "I do not think the age of consent can be raised without really interfering with the Hindu religion. Some girls do menstruate at ten or thereabout, and to make it an offence for a husband to cohabit with such would be flying straight in the face of the dictates of the Hindu faith...............I think the publicity which the *second marriage* ceremony gives to the time of the girl attaining puberty should be made use of in any legislation if it is decided to legislate."

5. Your Excellency's petitioners cannot but agree with the Hon'ble Sir Rames Chandra Mitra in his remark that premature sexual intercourse between husband and wife should not be characterised as rape, as the principal elements that constitute the heinousness of that offence are wanting in such sexual intercourse,

and the punishment also should not be at all so severe as that provided for rape. Indeed the severity of the punishment would serve only to defeat the very object of the measure. If the measure provided anything like a reasonable punishment for the husband guilty of the offence, premature sexual intercourse (without, of course the inflicting of bodily injury by the act, which can be dealt with under other Sections of the Penal Code), there might have been some chance of offenders being proceeded against. As it is, the absolute ruin that a successful prosecution would bring upon the poor victim of the offence, the unfortunate girl, would serve only to make the law a dead-letter except when designing men wanted to turn it into an engine of oppression.

6. An important and far-reaching measure like this, Your Excellency's petitioners humbly think, should not be passed in hot haste. Nor is there such urgency in the case, that the passing of the measure can not be delayed till the next Calcutta Session of the Legislative Council. But Your Excellency's petitioners do not wish to lay any stress upon this, as, indeed, it is unnecessary to do.

7. Your Excellency's petitioners ask leave to approach Your Excellency, only with this humble prayer that Your Excellency will graciously refrain from doing violence to the religious beliefs of your petitioners. Falling at your feet, in the right Hindu style of supplication, with joined palms, they earnestly implore you to be the defender of their religion, which is seriously threatened by the Bill in its present form. Remembering that Your Excellency is the representative of a sovereign who pledged solemly, in the name of God, not to interfere with the religion of her subjects, your petitioners implore you so to modify the Bill that it may not do violence to the Hindu religion. Your petitioners cannot make Your Excellency see into their heart of hearts, so that you might witness the deep pain and

anguish with which they contemplate the passing of this Bill in its present form. Your Excellency will hardly believe it, but it is none the less true that many of your petitioners have wept bitterly when the Report of the Select Committee convinced them that they had nothing to hope from the Council. Their only hope now centres in you. You are the responsible head of the administration, and you cannot divest yourself of an atom of your responsibility, by sharing it with others, in a case like this, for you have the power to *veto* any measure that may even be unanimously passed by the Legislative Council. To Your Excellency, therefore, your petitioners humbly appeal. Be the Saviour of their Religion, they were never in such extremity before; they never, for a moment, thought that the British Government could be moved to do violence to their religious feelings, after the solemn pledges given them by their revered and beloved Sovereign. They again implore Your Excellency by all that Your Excellency holds sacred, both here and hereafter, not to do violence to their religion. Indeed Your Excellency said, you did not want to do such violence. When the people say that the measure will do violence to their religious beliefs,—and this is a question of fact and not of Sástras—Your Excellency will surely graciously desist. Surely, there is no compelling sanctity in the number 12, that it cannot be altered to the age of puberty. This alteration, as has been shown above, would in itself, be an improvement, inasmuch as it would extend the protection sought to be given to poor girls to an age beyond 12 years in the majority of cases; it would have the effect of bringing the law of the land in harmony with the moral law of the people laid down in their sacred scriptures, so that pious Hindus might be made to see that the Government really wanted to restore the authority which the Sástras had happened unfortunately to lose with some people in the land; it would restore confidence to a despairing

people keenly sensitive in the matter of their religion, who, if the Bill became law, in its present form, could not fail to think that the Proclamation of their Sovereign, which they had hitherto considered as the Charter of their religious liberty, had been virtually annulled; and lastly it would pour oil over the troubled waters of a controversy between the whole orthodox community on the one hand, and a handful of reformers on the other,—a controversy which can have only one effect, namely, that of producing a reaction that would retard genuine reform for long years to come, for, after all, true reform must come from within; if Acts of the Legislature could make men moral and virtuous, sin and wrong would long ere this have been abolished from the face of the earth.

Grant then this humble, this earnest prayer of Your Excellency's petitioners to save their religion; and may God Almighty, the God of Christians, as well as of Hindus, bless Your Excellency with long-life and shower His choicest blessings on you and yours. It is not nothing, the benediction of a whole people, even though only a subject people when delivered from a great danger and a dire calamity. Be Your Excellency that honoured Deliverer, and Your Excellency's name will be cherished in the heart of hearts of a grateful people as never was any name cherished there before.

And your petitioners as in duty bound shall ever pray,

(Sd.) Peary Mohan Mukhurji,
,, Kedar Nath Chatterji,
,, Aubinash Chunder Banerjee,
and others.

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